



[REDACTED]

September 20, 2011

[REDACTED]

The PNC Financial Services Group

[REDACTED]

Pittsburgh, PA 15222-[REDACTED]

Dear [REDACTED]

This letter sets forth the terms and conditions pursuant to which The PNC Financial Services Group, Inc. and PNC Bank, National Association ("PNC") will retain Promontory Financial Group, LLC ("Promontory") to perform the services described below.

#### **BACKGROUND**

From October to December 2010, the banking agencies conducted an interagency horizontal examination of residential mortgage foreclosure activities at residential mortgage servicers, including PNC. Based upon those findings, the Office of Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System ("Federal Reserve") issued Consent Orders dated April 13, 2011 to PNC Bank and The PNC Financial Services Group, Inc., respectively (referred to herein as the "OCC Order" and the "Federal Reserve Order").

#### **SCOPE OF PROMONTORY SERVICES**

Subject to OCC approval, Promontory proposes to perform the role of independent consultant for the Foreclosure Review of certain residential foreclosure actions with respect to PNC's mortgage servicing portfolio in accordance with Article VII of the OCC Order. The objective of the review is to identify borrowers whose loans were serviced by PNC and who suffered financial injury from errors, misrepresentations, or other deficiencies identified in the review for pending or completed residential foreclosures in 2009 and 2010. The procedures for achieving this objective are detailed in Attachment A, "Methodology and Workplan".

In accordance with the OCC Order Article VII (2)(d) all Promontory workpapers associated with the Foreclosure Review will be made available to the OCC immediately upon request.

#### **INDEPENDENCE**

Promontory has been retained to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to PNC's mortgage servicing

portfolio (the "Foreclosure Review"). Promontory agrees that the Foreclosure Review will comply with all requirements set forth in Article VII of the OCC Order and that it will conduct the Foreclosure Review as separate and independent from any review, study, or other work performed by PNC or its contractors or agents with respect to PNC's mortgage servicing portfolio or PNC's compliance with other requirements of the OCC Order, as set forth below:

1. Conduct of the Foreclosure Review by Promontory shall not be subject to direction, control, supervision, oversight, or influence by PNC, its contractors or agents. Promontory shall immediately notify the OCC of any effort by PNC, directly or indirectly, to exert any such direction, control, supervision, oversight, or influence over the Independent Consultant, its contractors or agents.
2. Promontory agrees that it is solely responsible for the conduct and results of the Foreclosure Review, in accordance with the requirements of Article VII of the OCC Order.
3. The conduct of the Foreclosure Review shall be subject to the monitoring, oversight, and direction of the OCC. Promontory agrees to promptly comply with all written comments, directions, and instructions of the OCC concerning the conduct of the Foreclosure Review, and that it will promptly provide any documents, workpapers, materials or other information requested by the OCC, regardless of any claim of privilege or confidentiality. Additionally, for the purpose of conducting the Article VII Foreclosure Review, Promontory and their Independent Legal Counsel agree to adhere to and apply guidance issued by the OCC subsequent to any conditional or final approval of this engagement letter, including but not limited to, the application of OCC guidance concerning the definition of "financial injury" (see Exhibit 1 to Attachment A, *supra*, of this letter).
4. Promontory agrees to provide regular progress reports, updates and information concerning the conduct of the Foreclosure Review to the OCC, as directed by the OCC.
5. Promontory will conduct the Foreclosure Review using only personnel employed or retained by Promontory to perform the work required to complete the Foreclosure Review. Promontory shall not employ or use services provided by PNC employees, or contractors or agents retained by PNC with respect to the OCC Order or with respect to matters addressed in the OCC Order, in order to conduct the Foreclosure Review, except where the OCC specifically provides prior written approval to do so.
6. Subject to the requirements and restrictions of no. 5 above, including the requirement of specific approval by the OCC, Promontory may utilize documents, materials or other information provided by PNC, and may communicate with PNC, its contractors or agents, in order to conduct the Foreclosure Review. For example, Promontory may communicate with bank employees to obtain clerical assistance, to determine if information provided is complete or accurate, to verify or confirm information concerning specific case files, or to communicate with Bank employees regarding case files such that errors or omissions may be brought to the Independent Consultant's attention; however, Bank employees may not influence or attempt to influence determinations concerning the findings or recommendations of the Independent Consultant, whether regarding specific case files, categories of cases, or the Foreclosure Review more generally.

7. Promontory agrees that any legal advice needed in conducting the Foreclosure Review shall be obtained from the outside law firm whose retention for that purpose has been approved by the OCC. Promontory agrees not to obtain legal advice (or other professional services) in conducting the Foreclosure Review from PNC's inside counsel, or from outside counsel retained by PNC or its affiliates to provide legal advice concerning the OCC Order or matters contained in the OCC Order.

8. PNC's agreement with Promontory must provide that if the OCC determines, in its sole discretion, that Promontory has not been fully compliant with the foregoing standards (nos. 1-7, above), the OCC may direct PNC to dismiss Promontory and retain a successor consultant, in which case PNC shall have no further obligation to Promontory other than for services performed up to that date for PNC.

**Engagement Team**

The management team for this engagement will consist of the following personnel:

- [REDACTED]



resources we commit. Promontory's fees for the services outlined in the Scope of Promontory Services section above are expected to be [REDACTED] for the Project Leaders and Senior Technical Team and [REDACTED] for the primary reviewers. We estimate that once all of these personnel are engaged our fees should approximate [REDACTED] over the term of the engagement for the foreclosure file review and the complaint review subject to the potential additional staffing requirements discussed above. We estimate that our fees per month during the planning phase of the engagement to approximate [REDACTED]. The planning phase of the engagement will cover the following activities:

- Coordination with PNC for necessary hardware, software, access to systems and office accommodations.
- Attend all meetings, conference calls and provide information with and to the OCC as to their requirements as to the conduct of the engagement as well as what is to be covered in the engagement letter.
- Develop engagement specific training modules for our primary reviewers and Senior Technical Team.
- Develop engagement specific tracking and documentation system to capture the results of detail testing for the file reviews and complaint process.
- Develop the Complaint Process to be used by PNC during the engagement.
- Develop engagement specific review program templates for each step of the Foreclosure Review including file reviews and the Complaint Process.
- Develop sampling methodology and validate the foreclosure action in-scope populations and sampling segments.
- Perform a dry run of PNC's foreclosure systems by conducting tests of access, loan documents and review of foreclosure decisions. This dry run will be conducted over a two week period with six primary reviewers and the Senior Technical team.
- Develop summaries for the primary reviewers of the Hudson Cook law firm state foreclosure law surveys.
- Coordinating with PNC the use of the technology that will be used to document all the records that will be reviewed for each borrower.

Promontory will make a good faith effort to complete the Foreclosure Review within the time frames described in the OCC Order Article VII (2)(c) and (4) subject to any OCC directed scope changes during the course of our review and the number of exceptions detected that will necessitate expanded sampling or 100% reviews. Any extension of time required to complete the engagement will require approval from the OCC. Our fee estimate above does not include any of the fees and expenses from the expected assistance to Promontory from the Legal Advisors. In addition to our fees, we will bill PNC for all fees we incur from the Legal



Advisors. Our fees are also premised on the expectation that PNC will provide Promontory complete access to the foreclosure files for our review.

If we determine that our fees will exceed our proposed estimate, we will promptly notify PNC and discuss the matter in advance. The parties agree to act in good faith to reach an appropriate adjustment.

PNC further agrees to reimburse Promontory for all out-of-pocket expenses that we reasonably incur in connection with the performance of the services under this Agreement, such as travel, telephone, lodging expenses, etc.

In the event that the Scope should be revised by PNC or otherwise modified to include services not outlined in the Scope of Promontory Services above, this Agreement will be amended to reflect necessary changes to scope, timing, pricing and other applicable terms. The parties agree to act in good faith to reach an appropriate amendment.

Promontory will submit separate monthly invoices for fees and expenses.

**OTHER PROVISIONS**

This engagement will be subject to the following additional terms and conditions:

***Cooperation.*** PNC's cooperation with Promontory is essential to Promontory's ability to fulfill its responsibilities under this engagement. In particular, Promontory will expect PNC to make its officers, directors, and employees reasonably available to Promontory for interviews, meetings, or discussions as requested by Promontory, and to provide Promontory with timely access to documents and other records in PNC's possession or under its control that Promontory may require to complete its work in a timely manner.

***Limitation of Liability and Indemnification.***

[REDACTED]

***Confidentiality.*** Promontory and PNC Bank, National Association are subject to a mutual confidentiality agreement, dated as of March 25, 2010, which terms and conditions shall apply to this engagement. Promontory hereby agrees to abide by the terms of the March 25, 2010 confidentiality agreement with respect to information or documents received from The PNC Financial Services Group, Inc. as well. The provisions of the March 25, 2010 confidentiality agreement, and all provisions relating to confidentiality in this agreement, shall



survive any termination or expiration of this agreement. All Consultants, to the extent that they have not previously executed a confidentiality agreement in connection with their work for PNC, shall do so in a form satisfactory to PNC and Promontory before participating in this engagement. Consultants who have previously executed a confidentiality agreement in connection with work for PNC shall remain bound by that confidentiality agreement.

Promontory acknowledges that it may in the course of this engagement receive information and materials from PNC and/or PNC's outside counsel that are protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Promontory hereby agrees to keep all such information confidential, and acknowledges that PNC does not intend to waive attorney-client privilege, the attorney work product doctrine, the self-test privilege or any other applicable privilege or doctrine by the provision of such information to Promontory. Promontory further acknowledges that PNC considers the information and materials related to Promontory's review "information [submitted] to any Federal banking agency" within the scope of 12 U.S.C. § 1828(x).

***Access to Confidential Supervisory Information.*** In the event that it becomes necessary for Promontory to have access to confidential supervisory information, including examination reports or management responses, in order to provide the services required for this engagement, then, upon Promontory's request, PNC will use its reasonable efforts to obtain any approvals from the relevant bank regulatory officials required for Promontory to review and, upon receipt of such information, otherwise have access to such information and will provide copies of these approvals to Promontory upon Promontory's request.

***Bank Examination Material.*** PNC and Promontory acknowledge that the Foreclosure Review is being conducted in connection with the supervision of PNC by its bank regulators and that the information and material related to the review shall be considered bank examination material.

In accordance with regulations promulgated by the OCC, Promontory hereby (a) states its awareness of and agreement to abide by the prohibitions on dissemination of non-public OCC information contained in 12 C.F.R. § 4.37(b)(1) and (b) agrees not to use the non-public OCC information for any purpose other than as provided under its contract to provide services to PNC. In the event that Promontory shares any non-public OCC information with a consultant who is not an employee of Promontory, such a consultant must first have a written agreement with PNC in which the consultant: (i) states its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information set forth above; and (ii) agrees not to use the non-public OCC information for any purpose other than as provided under its contract to provide services to PNC.

Promontory further commits that any workpapers associated with the Foreclosure Review shall be made available to the OCC immediately upon request.

***Not Law Firm.*** PNC acknowledges and agrees that Promontory is not a law firm and that no part of the services to be performed pursuant to this Agreement shall constitute or be intended to constitute legal advice or the rendering of legal services.



**Standards.** Promontory shall provide all services in accordance with this Agreement and with a high degree of care and skill, utilizing its best professional judgment and commercially reasonable and acceptable business practices. The services being performed under this Agreement are not intended to, nor do they, constitute a promise or guarantee of a particular outcome.

**Acknowledgment.** Promontory provides services to multiple clients within the financial services industry. PNC acknowledges that these clients may be direct or indirect competitors of PNC (including major residential mortgage servicers subject to the interagency horizontal examination) and that the services Promontory provides to such clients may be similar to the services provided to PNC hereunder (including assistance with enforcement actions based upon the findings of the interagency horizontal examination).

[REDACTED] Notwithstanding the foregoing, PNC consents to Promontory's work for such clients subject to the confidentiality obligations of the Agreement and waives any actual, potential or perceived conflict of interest that may arise from Promontory's work on this engagement.

**Termination.** Either party may terminate this Agreement at any time upon written notice delivered to the other party; provided, however, that (i) PNC shall remain liable for fees and expenses payable to Promontory in respect of this engagement and accrued through the effective date of termination; (ii) termination of this Agreement will be without prejudice to any legal rights or obligations that may already have arisen; and (iii) the intellectual property, confidentiality, and limitation of liability and indemnification provisions of this Agreement shall survive termination.

Please acknowledge your agreement by countersigning this Agreement and returning it to me.

We look forward to working with you.

Sincerely yours,

[REDACTED]

Accepted for The PNC Financial Services Group, Inc. and PNC Bank, N.A.

Name: [REDACTED]  
Title: [REDACTED]

Date: September 20, 2011

## Attachment A Methodology and Workplan

### Methodology and the OCC Foreclosure Review Guidance

As required by Article VII (1) of the OCC Order, the Foreclosure Review will encompass “residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by PNC Bank, National Association (hereafter “PNC Bank”), whether brought in the name of PNC Bank, the investor, the mortgage note holder, or any agent for the mortgage note holder (including MERS), that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period” (hereafter, “In-scope Proceedings.”) In-scope Proceedings relate to first liens secured by owner-occupied, one-four family dwellings serviced by PNC Bank that process first lien mortgage foreclosures.

The objective of the review is to identify borrowers whose loans were serviced by PNC and who suffered financial injury<sup>1</sup> from errors, misrepresentations, or other deficiencies<sup>2</sup> identified in the review for pending or completed residential foreclosures in 2009 and 2010. The procedures for achieving this objective will consist of sampling of the population of certain residential foreclosures and the analysis of such foreclosure actions and the documentation thereof.

The methodology and workplan to be used is described in the following paragraphs. The OCC Consent Order sets forth the areas that need to be covered, at a minimum, as part of the Foreclosure Review. All loan files that are part of any sample population will be reviewed to determine the following (as more fully detailed in part 3.b of this Attachment):

- a) whether the foreclosing party had properly documented ownership or was otherwise a proper party to the action;
- b) whether the foreclosure was in accordance with applicable state and federal law;
- c) whether the foreclosure sale occurred when loan modification or other loss mitigation request was under consideration, or when the loan was performing in accordance with a trial or permanent loan modification, or when the loan had not been in default for a sufficient period to authorize foreclosure;
- d) for non-judicial foreclosures, whether the foreclosure sale and post-sale confirmations were in accordance with the mortgage loan and state law requirements;
- e) whether a delinquent borrower's account was only charged fees/penalties

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<sup>1</sup> See Exhibit I to Attachment A for the definition of financial injury.

<sup>2</sup> The terms "errors, misrepresentations, or other deficiencies" means those matters discovered during the Foreclosure Review as set forth in Article VII(3)(a)- (h) of the OCC's Order. "Errors" includes miscalculation of fees or other charges, where the net total aggregate miscalculated fees or charges applied to and paid by the borrower exceeds \$99.00.

permissible under the terms of the loan, applicable state and federal law, and were reasonable and customary;

- f) whether the frequency of fees assessed was excessive under the terms of the loan or applicable state and federal law;
- g) whether HAMP and proprietary loss mitigation requirements were followed; and
- h) whether any errors, misrepresentations, or other deficiencies identified in the review resulted in financial injury to the borrower or mortgagee.

**1. Scope of review**

**a. Portfolios**

Based on interviews of PNC personnel and review of documents, including internal audit reports, Promontory has determined that PNC has the following population of foreclosures to be considered for testing:

Table A-1  
**IN-SCOPE PORTFOLIO**

Portfolio name	Completed foreclosures	In process foreclosures	Total
PNC Mortgage	23,938	57,536	81,474

The combined total of 81,474 records represents the total population of foreclosure proceedings completed or in process from January 1, 2009 to December 31, 2010 (the "Foreclosure Period"). The 57,536 In Process foreclosures is composed of 29,573 actions which were still in process as of the end of the Foreclosure Period and 27,963 which were removed or suspended from foreclosure status prior to the end of the Foreclosure Period.

**b. Information Systems and Documents**

Table A-2 describes the information systems, sources of information and/or documents for Promontory's use in designing and executing the Foreclosure Review.

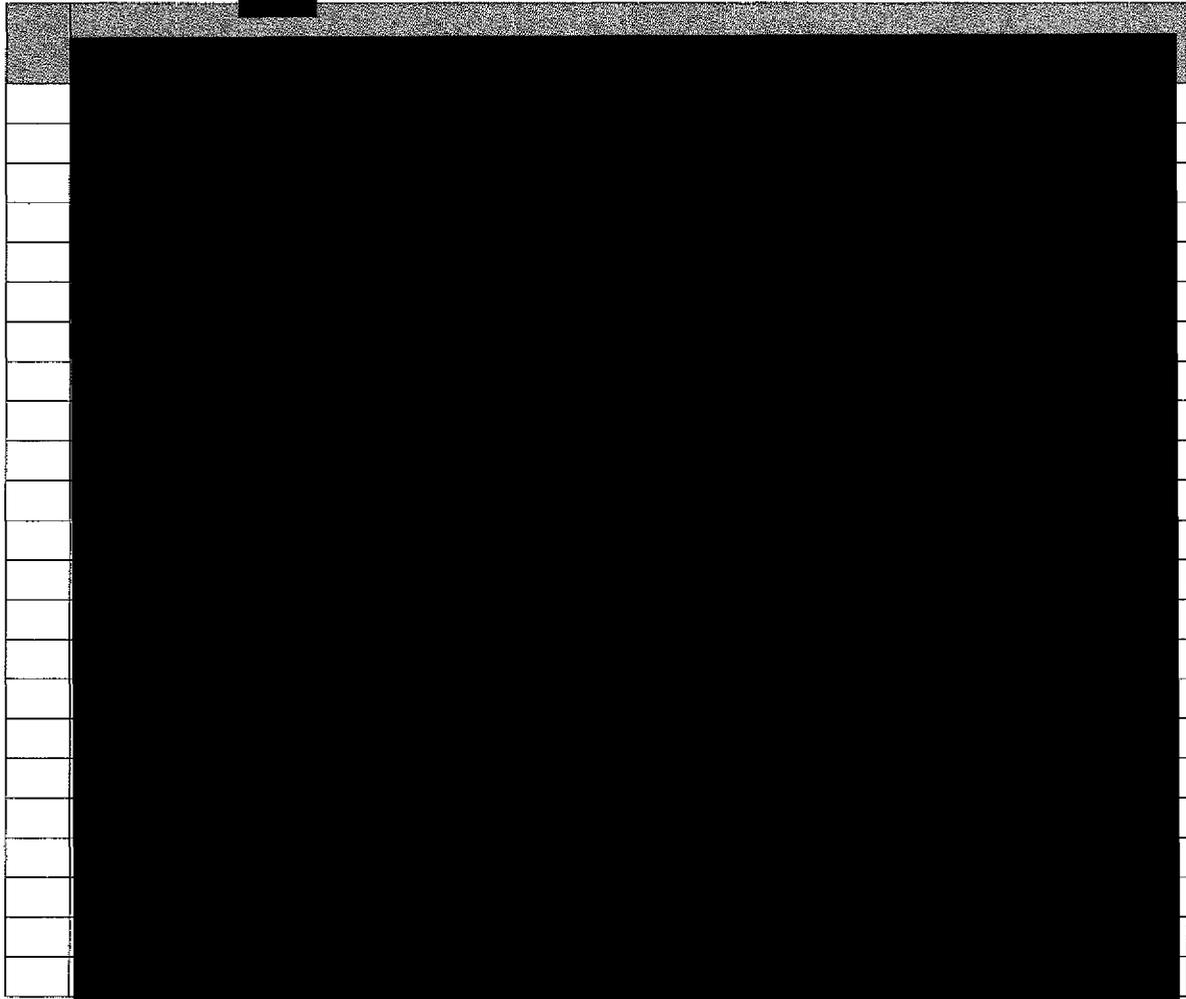
Table A-2  
**INFORMATION SYSTEMS PROVIDING DATA EXTRACTS FOR USE IN THE FORECLOSURE REVIEW**

Portfolio name	Mortgage servicing platforms	Other systems
PNC Mortgage	[REDACTED]	

PNC will be providing Promontory with direct access to the [REDACTED] servicing platform information system. Table A-3 below lists the screens that we will review as applicable.

Table A-3

**SCREENS TO BE USED IN THE FORECLOSURE REVIEW**



In addition, we will review, at a minimum, electronic images, of the relevant documents for each file sampled either from 

Table A-4

**FILE DOCUMENTS**

Document
Note
Allonge, if applicable
Copy of recorded Mortgage / Deed of Trust
All recorded assignments
Origination appraisal
Copy of BPO (during foreclosure)
Copy of DOD website data (SCRA)

	Document
	1003 / Loan application
	Military documents
	Breach/acceleration/NOD letter
	State required pre-foreclosure notices
	SCRA validation evidence
	Foreclosure title report
	Filed complaint
	Affidavit/Evidence of service completion
	Entered Judgment (document)
	Foreclosure Bidding Instructions
	Foreclosure sale results (letter from attorney office) / Post Sale Confirmation
	Recorded foreclosure deed
	Post foreclosure sale redemption/confirmation/ratification information
	Executed affidavit of indebtedness/judgment figures
	Pacer bankruptcy report
	Bankruptcy 341 loss mitigation notice
	Bankruptcy discharge documentation
	Bankruptcy trustee abandonment documentation
	Bankruptcy order granting motion for relief
	Bankruptcy order closing case
	Bankruptcy dismissal notice
	Bankruptcy cram down, lien strip or lien avoidance documentation
	Invoices to support all corporate advance transactions, including a breakdown of Attorney fees/invoices
	Loss mitigation letters (solicitation, follow up, approval and denials) inbound and outbound
	Borrowers financial package (hardship letter, financial information, 4506T, tax returns etc)
	Trial modification agreements
	Permanent modification agreements
	Modification underwriting worksheet
	Freddie/Fannie Loan Mod transmittal worksheet
	Loss mitigation appraisal or BPO
	NPV data/analysis (HAMP and Servicer Loss Mit decisions)
	Substitution of Trustee
	Substitution of Counsel
	Legal Disputes: documents, notes, etc

Where necessary to resolve preliminary unvalidated exceptions and preliminary validated exceptions, Promontory will supplement information obtained from these sources with additional information obtained from PNC or its foreclosure attorneys.

## 2. File Review Selection Approach

### a. Overview

To ensure that the foreclosure review effectively and efficiently identifies errors, misrepresentations and deficiencies within the scope of Article VII of the OCC Order (“exceptions”), Promontory will conduct the Foreclosure Review as follows:

1. Segment the population for initial file review and conduct sample testing;
2. Analyze testing results and determine the types of exceptions found, if any, discuss findings with the OCC;
3. Determine if further sampling, 100% testing or targeted analysis is required on sub-segments of the loan population or certain foreclosure situations to assess borrower “harm”, if any, after consultation with the OCC;
4. Summarize any exceptions by type and whether any borrower harm was identified/quantified;
5. Determine the necessary reportable exceptions and include in final report.

### b. Sampling Process

Promontory will perform validation procedures for the total population of the loans covered by the Foreclosure Review as well as the segments selected for review within the total population. In addition, we will perform an overall reconciliation of the relevant [REDACTED] database information with investor reports, elements of the general ledger and the [REDACTED] database. The [REDACTED] database is used to download the [REDACTED] information in order to select the total population and segments for the Foreclosure Review. Promontory will set up a separate environment with data and will rerun the [REDACTED] scripts and Excel pivot tables used to derive segments as well as selected segment scripts. We will compare our findings of the total population and the segments to those totals provided by PNC.

Promontory will segment the mortgage foreclosure actions population in the following manner based on the May 20, 2011 guidance and subsequent discussions.

#### 1. Geographic

- a. Four initial samples of 100 loans/sales will be taken for each of the following high volume states: California, Florida, Illinois and Ohio. These represent the four states with the largest volume of loans and represent 40% of Foreclosure Sales and In-Process during the Foreclosure Period. The scope of review will be A-H<sup>3</sup>.

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<sup>3</sup> Refers to Article VII (3) (a) through (h) of the PNC Consent Order

- b. In the remaining states, four initial samples of 100 each will be reviewed. The four samples will be: Foreclosures – Sales split between judicial and non-judicial states and Foreclosures – In Process split between judicial and non-judicial states. The samples will be reviewed to ensure that each state has at least 5 loans for each of the two categories (Foreclosure – Sales and Foreclosures in Process). If a state is not represented in the samples with at least 10 loans (5 for each of the two categories), additional loans will be randomly selected for review. We estimate that an additional 223 loans will be needed to achieve this level of state coverage. The scope of review will be A-H.

## 2. Third Parties

- a. Law Firms with known deficiencies, delisted by any GSE or discontinued by the bank

There are four firms that the bank has discontinued that have also been delisted by the GSEs. The firms are [REDACTED]

[REDACTED] We will do four initial samples of 100 loans/sales for each of these firms. The scope of the review will be A-H.

- b. Large volume foreclosure firms

Five of the seven highest volume firms are already adequately covered by the [REDACTED] Sample above under delisted by GSEs and through the geographic samples for California, Illinois and Ohio. The percentage of loans within those states covered by large firms are as follows:

[REDACTED] – 83% of the California loans

[REDACTED] – 79% of the Illinois loans

[REDACTED] – 47% of the Ohio loans

There will be two initial samples of 100 loans/sales each for the next two largest volume firms, [REDACTED] and [REDACTED]

[REDACTED] Beyond these seven firms, there does not appear to be a concentration in attorneys used. The scope of the review will be A-H.

- c. Other third party vendors

There are 3 third party vendors, [REDACTED] who performed loss mitigation work for the bank. We will do an

initial sample of 100 loans/sales for this group. The scope of the review will be A-H.

d. Document Execution Service Providers

None used.

3. Behavior

a. Rescinded Foreclosures

A bank prepared analysis was reviewed to determine areas of highest risk.

An initial sample of 100 loans will be reviewed. The scope of the review will be A-H.

b. Modifications that were foreclosed, applications pending for loan modification or loss mitigation, or loan not in default for sufficient period of time to authorize foreclosure.

Data base will be screened to determine if there are any loans where completed applications were submitted, but no denial letter is on file and property was sold. These loans will receive a 100% review. The scope of the review will be A-H.

Data base will be screened to determine the number of days a loan was in default vs. the foreclosure start date and the state. Parameters to screen for loans will depend on state law, GSE requirements or other governing laws. These loans will receive a 100% review. The scope of the review will be A-H.

c. Borrower has a debt cancellation contract

There are none of these loans.

d. Fees assessed to the account prior to the delinquency precipitating foreclosure (pyramiding fees)

Review procedures for all loans/sales in the A-H samples include a review of the payment history to determine the appropriate crediting of payments and assessment of loan fees to detect cases of pyramiding.

4. Claims and complaints

a. Appropriate samples of claims and complaints previously submitted to the institution.

- b. An initial sample of 100 complaints received by the bank from Jan-1-09 to Dec-31-10 related to in-scope loans in the foreclosure process during 2009 and 2010 will be conducted. The scope of the review will be focused on the issue raised by the complainant.
- c. A 100% review of all complaints received by the bank after Jan-1-11 related to loans in the foreclosure process during 2009 and 2010 will be conducted. The scope of the review will be focused on the issue raised by the complainant. This segment is discussed further under Reviewing Customer Complaints.
- d. A 100% review of complaints forwarded by State and Federal governmental agencies related to loans in the foreclosure process during 2009 and 2010 will be conducted. The scope of the review will be focused on the issue raised by the complainant.
- e. A bank prepared analysis of contested foreclosures was reviewed to determine areas of highest risk. An initial sample of 100 contested foreclosures will be reviewed. The scope of the review will be A-H.

## 5. Additional Segments

### a. Bankruptcy Cases

- 1) We will screen the population of foreclosures that were in bankruptcy at some point during the foreclosure process to determine the population of loans with no release date, but having a foreclosure sale date. We will review 100% of this group to determine if the sale was in accordance with law.
- 2) We will screen the population of 2009 and 2010 foreclosures for any loans in bankruptcy 1 year prior to foreclosure or during the foreclosure process to determine if there was an active foreclosure process while the borrower was in bankruptcy and prior to receiving a release. We will review 100% of this group to determine if the foreclosure process was appropriately suspended and not restarted until a release was received.
- 3) For loans that were in foreclosure, moved to bankruptcy, moved back to foreclosure and then to sale, an initial sample of 100 sales will be reviewed. The scope of the review will be A-H.

- 4) We will screen for foreclosure sales held less than 30 days after the release date and review 100% of this group. The review will focus on whether the sale was in accordance with law.
- 5) For loans that are in foreclosure where there was a bankruptcy during the foreclosure process, an initial sample of 100 loans will be reviewed. The scope of the review will be A-H.
- 6) If a list is received from the US Bankruptcy Trustees of cases that warrant attention, we will do a 100% review of the issue designated.
- 7) For loans that were in Bankruptcy where the stay is lifted and the loan remains in a suspended status, an initial sample of 100 loans will be reviewed. The scope of the review will be an analysis of the reason for the continued suspended status.

b. Servicemember's Civil Relief Act ("SCRA")

A 100% review of the loans coded for SCRA and in foreclosure during 2009 and 2010 will be conducted. The scope of the review will be A-H.

c. HAMP and PNC Loss Mitigation Program

- 1) During the file reviews of all samples where an A to H review is being performed, reviewers will determine if HAMP was offered and the process was in accordance with the rules in existence at the time, if PNC's loss mitigation programs were offered and if the reason for denial was valid.
- 2) It should be noted that all HAMP denials receive a second review by the GSEs. We have reviewed the GSE reports and have determined that there were no exceptions that require review.
- 3) An initial sample of 100 loan modifications denied on the basis of lack of income and an initial sample of 100 loan modifications for those modifications denied on the basis of DTI or NPV will be conducted. The review will focus

on the accuracy of the DTI (front end and back end ratios), NPV calculations and income supporting documentation.

- 4) An initial sample of 100 loan modification applications denied for incomplete packages will be reviewed. The scope of the review will be the support for the loan modification denial.

d. Processing centers

PNC's processing was centralized in one center until Oct-25-10 when the [REDACTED] center started to assume some of the processing functions. Only FNMA Loss Mitigation was transferred at that time. No additional samples are proposed.

e. Other - Ownership

From the population of all foreclosures, three additional initial samples of 100 will be taken based on ownership – Bank-owned, Private and GSE. The scope of the review will be A-H.

f. Other – Removed from foreclosure

- 1) An initial sample of 100 of those foreclosure actions resolved through modifications, forbearance and other means of remediation will be reviewed. This will include PNC modifications, HAMP modifications, HAMP-FHA modifications, FNMA modifications, Cured/Reinstated, Long Term Forbearance and Repayment Plans. The scope of the review will be A-H.
- 2) An initial sample of 100 of those foreclosure actions repaid in part or full will be reviewed. Completed Short Sales, Prequalified Short Sales, Paid in Full, Prior Sold, Deed in Lieu and Settlement. The scope of the review will be A-H.

### **3. Analysis of Sample Exceptions and Subsequent Follow-up**

The hypothesis to be tested in the sample process is “PNC’s servicing of loans that were in foreclosure during the 2009 and 2010 time period consistently avoided foreclosure process exceptions, which were financially harmful to the borrower.” The elements of the foreclosure process being tested in the initial samples are those items listed in Article VII (3) (a) to (h) of the OCC’s Consent Order. The exceptions to this scope are detailed in the discussion of sample segments in section 2b above.

The **first step** in the analysis will be to review in detail **all** exceptions from **all** samples and determine if the borrower has been financially harmed and the elements of harm (how the borrower was harmed). Two aspects of harm will be considered 1) borrowers charged impermissible or excessive penalties, fees, or expenses, or who suffered other financial injury (e.g., loan modification denials that were in error, misapplied payments, payments held in suspense) and 2) any foreclosure sale where the foreclosure was not authorized in accordance with the terms of the mortgage loan documents and state and Federal law or when the borrower was performing under an approved loan modification or repayment plan. The absence of financially harmful foreclosure exceptions in a given sample segment of the initial sample will indicate, at a high level (95%) of reliability, that the incidence of financially harmful foreclosure exceptions in the underlying population segment does not exceed the indicated level of precision (3%). No further work will be done on these populations unless directed to do so by the OCC.

The **second step** is to analyze the financially harmful exceptions. Once the population of borrowers who have been financially harmed is identified, it will be analyzed to determine common causes of harm, i.e.; types of fees, penalties or expenses or inappropriate foreclosure and common attributes, such as geography, originator, foreclosure attorney, loans modified or not, bankruptcy and other segment characteristics being sampled. If a sample has only one exception, we would still use this exception and all its attributes in analyzing all of the sample exceptions to determine the root cause for exceptions and patterns. For example, if we have exceptions in a specific law firm sample and exceptions in a state sample where the attorney is the same, we would analyze the exceptions with respect to their original sample (state and law firm) and also together to determine a root cause as they share common attributes. The goal of the analysis is to determine the root cause of financially harmful exceptions and whether financially harmful exceptions are isolated occurrences or a pattern or practice.

The **third step** is to discuss all exceptions with the bank. We will determine if the exceptions had been previously identified and whether some form of remedial action has been taken by the bank. We will determine the adequacy of any remedial action and whether there was bank action to identify and follow-up on others borrowers similarly impacted. In determining the further segments of the population to be reviewed, we will consider the analysis of the sample exceptions and additional intelligence gathered on any previous bank actions to identify similar borrowers. Promontory will consult with the OCC on the results of the initial sample analysis.

We will document all exceptions that did not result in financial harm to the borrower, analyze them for common problems and provide that information in the report. Promontory will provide a listing of all these exceptions to the OCC for their review.

The **fourth step** will be to develop new sample segments and populations for 100% review and to determine the targeted scope of these reviews. Based on the root cause analysis of the samples, the intelligence gathered during the review process and input from the OCC, Promontory will develop new sample segments, which will be subject to OCC approval. The goal is to create sample segments, which share attributes with previously identified financially harmful exceptions. The scope of the review of these samples will be focused on areas where problems were found. Where populations are small or there is cause to believe a systemic

problem exists, we may require 100% review of similar loans. For example, the results of the samples of geography and large volume foreclosure firms may both indicate that the fees a firm is charging in a particular state exceed the allowable fee in that state. If the results showed a problem with a substantial number of loans handled by that firm in a particular state, a 100% review might be warranted. However, if the number of loans that were exceptions is small and no other common attribute was determined, a second sample of all loans handled by that attorney in that state would be reviewed to determine whether fees were allowable and reasonable and further define which borrowers groups were impacted.

The **fifth step** is to analyze the results of the second round of reviews similar to what was done in steps one and two. As the goal is to identify financially harmed borrowers, once the portion of the population impacted by a harmful exception is sufficiently identified/confirmed through the sampling process, a 100% review will be conducted of all potentially impacted borrowers. If the population impacted by a harmful exception is not sufficiently identified, additional samples may be required. Where exceptions may be detected or populations refined through an automated analytic review based on selected criteria, this will be considered and discussed with the OCC. An example of a potential automated analytic review is in the area of inspection fees, where all inspection fees outside of allowable parameters would be searched and loans that are outliers are identified on an automated basis. A 100% review of the outliers would then be conducted to determine if financially harmful exceptions existed. When additional samples are taken, a confidence/reliability factor of 95% and a precision/tolerance level of 3% will be used. If the number of loans in the new sample segment is less than 100, a 100% review will be done for the targeted harmful exception. If the results of any sample segment do not result in identification of any harmed borrowers, we will accept the hypothesis with 95% confidence that the harmful exception rate does not exceed 3%, and we will stop reviewing files for that segment unless otherwise directed by the OCC. The presence of a single exception in a given sample segment will require us to reject the null hypothesis in regard to that segment and do additional reviews through sampling or 100% file reviews.

During this process we will continue to confer with the OCC on the results of subsequent samples, analysis of exceptions and proposed additional sampling, automated analytic reviews or 100% file reviews. Subsequent samples will be subject to OCC approval. All exceptions will be reviewed with the bank, OCC and fully documented in the report.

#### **4. Foreclosure Review Process**

##### **a. Foreclosure Review Process Overview**

Promontory will use a multi-level review process to ensure accurate and consistent review of foreclosure files. The initial review will be completed by the primary review team and reviewed by a designated Review Supervisor. A Senior Technical Team member will review all documentation and findings from the first two levels of review. Each exception will be elevated to the Supervisor and Senior Technical Team to determine if they agree with the findings of the primary review team. Further, the Senior Technical Team (very experienced

default servicing and foreclosure team members) will also answer all questions about interpretation of the loan foreclosure documents. Our legal liaison will also coordinate with the Legal Advisors on all legal questions of State or Federal law or regulations. While Promontory will consult with PNC, Promontory, in its sole discretion, will determine whether an error, misrepresentation or other deficiency within the scope of Article VII of the Order occurred, and, if so, whether it resulted in financial harm to the borrower.

All primary reviewers and Supervisors will participate in a mandatory two day training session which will cover the requirements of the Order, Promontory's detail workplan, PNC's information systems and documentation requirements. The training will be updated on a weekly basis to alert the reviewers as to the findings of the review to date and any changes in process.

A checklist of all documents and procedures to be performed will be utilized by all review team members. The checklists and procedures are customized to meet the requirements of the specific foreclosure situation and the State law and regulations governing foreclosure requirements. As possible exceptions are identified by the primary assessment team, Promontory will consider such errors, misrepresentations, or deficiencies evidenced by the files as "unvalidated preliminary exceptions." For each "unvalidated preliminary exception", the Supervisors and Senior Technical Team will provide further analysis steps to be performed. The Supervisors and the Senior Technical Team will review 100% of all "unvalidated preliminary exceptions" to determine final resolution as an "exception". The Senior Committee will confirm the "final exceptions" that are to be reported in our final report. All pending and finalized exceptions are captured in our review database and will support the final issued report. As discussed above, all exceptions will be discussed with the OCC.

For each "final exception", a PNC team will review such exception, in order to supply missing information or analysis relevant to Promontory's analysis or conclusions. Promontory's Senior Committee will make its final determination of reportable exceptions and recommend remediation to be made and/or compensation to be paid to the borrowers.

**b. Testing for Potential Errors, Misrepresentations or Other Deficiencies that will be identified as "exceptions"**

**1. Consent Order Section VII (3)(a) – Determining Proper Documentation of Ownership**

Article VII(3)(a) of the Consent Order requires the independent consultant to determine whether, at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or similar status.

To make this determination, Promontory will test documentation of ownership against the standards of applicable state law. Promontory will identify all exceptions relating to the

documentation of ownership. Promontory will utilize information that is external and internal to the files. External sources may include:

- Interviews with PNC personnel responsible for providing foreclosure counsel (or attorneys defending bankruptcy proceedings) with information concerning ownership of the promissory note and mortgage (or deed of trust);
- Review of examination and audit reports for weaknesses in the process of establishing ownership; and
- Independent research into public allegations that particular units, employees, agents, or law firms failed to follow applicable state law when submitting pleadings or affidavits documenting ownership.

Promontory will review each file for:

- Indications that the borrower asserted or complained that the foreclosing party or agent of the party had not properly documented ownership of the promissory note and mortgage (or deed of trust); and
- Any indication that ownership of the promissory note or mortgage, or other proper party status, is or was inconsistent with the ownership or other proper party status asserted in the pleading or affidavit.

## **2. Consent Order Section VII (3)(b) and (d) – Determining whether the Foreclosure Process Complied with Applicable Law and Mortgage Terms**

Article VII(3)(b) of the Order requires the independent consultant to determine whether the foreclosure complied with applicable state and federal law, including but not limited to the SCRA and the U.S. Bankruptcy Code. Article VII (3)(d) requires the independent consultant to determine whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations were consistent with the terms of the mortgage loan and state law requirements.

In making these determinations, Promontory will apply test standards from Table A-6 to describe applicable state law as that term is used in Article VII of the Consent Order (the “Foreclosure Survey.”). The Foreclosure Survey includes state law applicable to both judicial and non-judicial foreclosures, including “the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations,” as contemplated by VII(3)(d) of the Consent Order. With respect to non-judicial foreclosures, Promontory will also consider the terms of the mortgage loan.

Promontory will consider applicable federal law to include the following:

- SCRA;
- US Bankruptcy Code;

Promontory will review each sampled file against applicable state and federal standards. The workplan checklist will set forth the specifics of what tests and information is necessary to make the determination that the foreclosure process was carried out in accordance with Federal and State regulations and the terms of the mortgage, where applicable.

### **3. Consent Order Section VII(3)(c) – Determining Appropriateness of the Timing of Foreclosure**

Article VII (3)(c) of the OCC Order requires the independent consultant to determine whether a foreclosure sale occurred when an application for a loan modification or other Loss Mitigation was under consideration; when the loan was performing in accordance with a trial or permanent modification; or when the loan had not been in default for a sufficient period of time to authorize foreclosure pursuant to the terms of the mortgage loan documents and related agreements.

Promontory will make these determinations through (1) a query of PNC's [REDACTED] system that will compare foreclosure action and loss mitigation action dates; and (2) a review of the contents of each sampled file. An application for loan modification will be considered under consideration if a completed information package was received by the borrower and an initial determination had not yet been communicated to the borrower. We will record any exceptions in the Foreclosure Review database. Where we cannot answer a particular question because file information is missing or insufficient, we will flag the file for escalation to the Senior Technical Team

### **4. Consent Order Section VII(3)(e) – Determining whether Fees and Penalties Assessed were Permissible, Reasonable and Customary**

Paragraph 3(e) requires the independent consultant to determine whether any fees or penalties assessed were permissible, reasonable, or customary, or excessive. Promontory will make these determinations by testing files against defined exceptions, deeming an exception to have occurred when the file indicates that PNC charged one or more fees or penalties that failed one or more test conditions – either amount or type. Because Promontory will test each loan file against all conditions, a single file could include multiple exceptions.

Promontory will test permissibility of fees and penalties by reference to limits established by state law, federal law and the borrower's mortgage instruments. Promontory will examine each file for impermissible charges under each of these authorities. If one or more of these authorities limit fees or penalties, or a particular type of fee or penalty, in the aggregate, Promontory will evaluate total fees and penalties, or total fees and penalties of that particular type, by reference to that limit. Considering any limitations on fees or penalties established by

the law of the state in which the residential property securing the loan is located, Promontory will test each loan file to determine:

- Whether the type(s) of individual fees and penalties charged to the account was permissible;
- Whether the amount(s) of individual fees and penalties charged to the account was permissible;
- Whether the sum(s) of individual fees and penalties charged to the account was permissible.

Considering limitations on fees or penalties established by federal law, Promontory will test each loan file to determine:

- Whether PNC impermissibly charged fees or penalties to the account during the pendency of a borrower's bankruptcy proceeding;
- Whether PNC impermissibly charged fees or penalties to the account of an active service member.

Considering limitations on fees or penalties established by the loan document, Promontory will test each loan file to determine whether fees and penalties individually or in aggregate exceeded amounts disclosed in the borrower's promissory note.

Except as provided in the next paragraph, Promontory will evaluate the customariness of fees and penalties by reference to servicer guidance promulgated by Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA) and the U.S. Department of Veterans Affairs (VA) for their respective insured and investor-owned loans. Promontory will deem not customary any fee or penalty inconsistent with such guidance in type or amount.

For non-conforming, non-FHA and non-VA loans, Promontory will deem not customary any fee or penalty inconsistent with Fannie Mae guidance (as in effect at the relevant time) in type or exceeding such guidance by more than 10% in amount.

For those foreclosure related costs not covered by state law limitations or GSE and federal agency guidance, the costs will be compared to the market rate to evaluate for reasonableness. Market rate will be defined as the cost of the service or product to PNC that represents the average cost for the product or service within the respective geographic area.

Promontory will evaluate each fee or penalty for reasonableness. Promontory will deem unreasonable any fee or penalty that:

- Is associated with the processing of a borrower request for loss mitigation, including loan modification unless that fee was allowed by the relevant investor or GSE;
- Was assessed to protect the interests of a secured party when the borrower had accepted and was in good standing under a temporary loan modification or Trial Period Plan;

- Was assessed for late payment when the borrower had made timely payment in an amount consistent with the terms of an accepted temporary loan modification;
- Was assessed for forced placement of insurance when insurance was already in force.

#### **5. Consent Order Section VII (3)(f) – Determining whether Fees and Penalties Assessed were Assessed with Excessive Frequency**

Article VII (3)(f) of the Order requires the independent consultant to determine whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, and applicable state and federal law. In performing this evaluation, Promontory will consider whether PNC assessed the fee or penalty with a frequency that was:

- Impermissible under the law of the state of the residential property associated with loan;
- Impermissible under Federal law;
- Impermissible under the terms of the borrower's promissory note; or
- More than necessary or appropriate for completion of the underlying service.

Specifically, a query of the [REDACTED] system will be made regarding the fees and penalties assessed and the frequency of their assessment for each foreclosure tested. All potential exceptions will be reviewed by the Senior Technical Team for final determination as an exception.

#### **6. Consent Order Section VII (3)(g)- Determining whether Loss Mitigation Activities were Properly Conducted**

Article VII (3)(g) of the Order requires the independent consultant to determine whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of the HAMP, and consistent with the policies and procedures applicable to the Bank's proprietary loan modifications or other loss mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled properly, a final decision was made on a reasonable basis, and was communicated to the borrower before the foreclosure sale.

Promontory will make these determinations through (1) review of PNC's [REDACTED] and (2) a review of the contents of each sampled file. All borrower applications for loan modification and loss mitigation programs and the related actions and communications by PNC will be reviewed for each sampled file. The file review will include assessing both HAMP and proprietary requirements for eligibility, solicitation, qualification and all quantitative borrower analysis. Any exceptions identified will be reviewed by the Senior Technical Team for final determination of exception status.

## **7. Consent Order Determining whether Errors, Misrepresentations or Other Deficiencies Resulted in Financial Injury to the Borrower**

Article VII (3)(h) of the Consent Order requires a determination of whether the borrower has suffered financial injury. The definition of financial injury can be found in Exhibit 1 to Attachment A.

### **5. Reviewing Customer Complaints**

#### **a. Overview**

Close review of borrower complaints is essential to accomplishing the goals of the Foreclosure Review as contemplated by the OCC. As part of the Foreclosure Review, Promontory will be reviewing complaints where the loan and issue are within the Foreclosure Review Scope as follows: 1) 100% of the complaints forwarded by State and Federal agencies during 2009 and 2010; 2) a sample of complaints filed with PNC prior to Jan-1-11; 3) 100% of all complaints filed with PNC after Jan-1-11; and 4) 100% of complaints received through the coordinated outreach process. The complaints received through the outreach program will be processed by Rust Consulting Inc., (“Rust”), researched by PNC with oversight and quality assurance on both the Rust and PNC processes performed by Promontory. Promontory will make the final determination on the disposition of the outreach complaints including whether there was financial injury and recommended remediation and/or compensation to be paid to the borrower. Promontory will review complaints filed directly with PNC through a file review focused on the nature of the complaint. We will determine whether there was financial injury to the borrower and if so, whether PNC’s response was adequate.

The Foreclosure Review will include an analysis of loan files associated with borrower complaints during the review period. Promontory will independently oversee and validate PNC’s conduct of this process (“Foreclosure Complaint Process”), evaluating both the underlying borrower’s complaint and the appropriateness of PNC’s disposition of it. Specifically, Promontory will assess the PNC process to handle and review borrowers’ complaints and how such process ensures the following:

- The complaint is reviewed promptly,
- PNC’s review process is complete and timely,
- PNC resolves borrower complaints in an appropriate and timely manner.

#### **b. Scope**

The review of the Foreclosure Complaint Process will include the sample segments detailed above and those complaints received directly by the bank starting on January 1, 2011. The

launch date for the complaint outreach process will be September 30, 2011 and the cut-off date for filing complaints to be reviewed by Promontory will be 120 calendar days from the launch date. "In scope complaints" are defined as complaints regarding residential mortgage foreclosure actions on first lien mortgages secured by owner-occupied, one-four family dwellings that were initiated, pending, or completed in 2009 or 2010. Complaints for borrowers in active litigation will be included in the complaint review if they are otherwise in-scope.

#### **c. Plan for Promoting Complaint Opportunities to Borrowers Potentially Harmed**

PNC in coordination with the other 13 servicers will publicize the opportunity for borrowers to submit foreclosure-related complaints through a variety of channels to reach as many borrowers who have changed address as practicable. Publicity vehicles that will be used include:

- First class mail to in scope borrowers (where the borrower has initiated litigation all communications will be directed to their legal representative);
- In cooperation with other servicers, newspaper notices in national newspapers and local newspapers in high volume foreclosure areas;
- An Independent Foreclosure Review website hosted by Rust, which will include a link to the complaint form, information on how to fill out the form, "Frequently Asked Questions" and a PNC website link;
- A call center to provide complaint forms and answer questions hosted by Rust; and
- Notification of the process to relevant advocacy organizations.

#### **d. Complaint Intake Process**

The coordinated promotions handled through Rust and undertaken pursuant to paragraph c. above will explain the process of submitting complaints to PNC and other servicers.

Communications will include:

- Why the borrower is being contacted;
- How eligibility will be determined;
- Necessary information that PNC and the independent consultant will need from the borrower when the borrower responds;
- Channels available to the borrower to contact the Independent Foreclosure Review, including telephone assistance and the internet;
- The timeframe for filing a complaint as part of the Independent Foreclosure Review;
- What to expect of the process and when a response should be expected.

Borrowers will be asked to fill out a standardized form to be developed by all 14 Servicers and approved by the OCC, which walks the borrower through their eligibility and key complaint issues, while also providing for non-standardized comments from the borrower. In order to ensure proper control of incoming complaints, borrowers will be asked to mail complaints to a P.O. Box that will be dedicated to this process and controlled by Rust or fill out and submit the



standardized form through the Independent Foreclosure Review website. Forms filed on the website and mailed will be processed by Rust. Promontory will monitor and provide quality assurance over the initial mailing process, return mail process, logging and imaging of complaints, determination of in scope status and mailing of acknowledgement letters by Rust. We believe that it is important to limit the vehicles to written complaints filed on the standardized form, in order to exercise proper control and ensure that there is a means of verifying the identity of the complainant.

The initial letters sent by Rust will have as the return address the dedicated P.O. Box mentioned above. Undeliverable return mail will go back to the box and be controlled by Rust with oversight of the process by Promontory. As normal skip tracing actions (both internal and external) will be taken prior to mailing, one additional attempt will be made by Rust to further trace the borrower and obtain a valid address for any mail that is returned.

There will be a unique 800 number with a well prepared team for handling the phone call center that will be operated by Rust. The phone center will be able to provide standardized forms and answer questions on eligibility and how to fill out the forms working from Independent Consultant approved scripts. Training will be held for call center staff by Rust with Promontory oversight prior to launch of the program. We do not plan to have Rust take complaints over the phone, but the phone call center will do follow-up calls to develop incomplete information once a written form is submitted.

A complaint received from the outreach process will be logged in the same day it is received by Rust. Rust will send an acknowledgment letter within 7 calendar days of receipt of the written complaint. The acknowledgement letter will indicate that a response or follow-up will be forthcoming within several months.

#### **e. Complaint Review Process**

An initial review of the in scope complaint forms will be performed by Rust to determine whether the form is complete and if so, Rust will classify the complaint by type of complaint and place the complaint in a queue for PNC action. If the complaint form is incomplete, Rust will contact the borrower by letter. If information is received from the borrower and the form is considered complete, the complaint will be categorized and placed in the queue for PNC action. If additional information is not provided, Promontory will review the form to determine if there is sufficient information for the complaint to be actionable. If there is sufficient information to take action on the complaint, but the complaint lacks specificity, the borrower's file will be reviewed for all of the provisions of Article VII (3) (a) to (h). For complaints with no actionable information, a follow-up letter and additional form will be sent. For borrowers who do not respond 30 days after the date of the "Incompleteness Letter," PNC will send a resolution letter indicating no further action can be taken due to the lack of information.

Promontory will map their templates for review to the categories/types of complaints. For complaints that fall into the "Other" category, Promontory will review the complaint and indicate on a case by case basis, which templates or template steps will be covered and provide that direction to PNC. The bank will research the complaint and use the Promontory templates

to document their review and findings. Upon completion PNC will provide the complaint and all supporting documentation to Promontory.

Promontory will review 100% of in-scope borrower complaints and claims, together with supporting PNC documentation. If Promontory's review requires additional information, Promontory will request such information from PNC. Each loan will receive a Supervisory and Senior Technical Team review.

When the review levels agree with PNC's findings, they will note exceptions and classify findings into four categories: no exceptions, financial harm exceptions, reportable exceptions and missing documentation exceptions. When Promontory does not concur with PNC's findings, it will document the issues and return the file to PNC for further research and review. Once PNC's second review is completed, Promontory will review the file and if in agreement, note the exceptions and classify the findings into the four categories mentioned above. If a disagreement is unresolved after the second review, Promontory will make a final decision on the complaint, note exceptions and classify the findings.

When exceptions are found, Promontory's Senior Committee will make the final determination on the category of the exceptions. For exceptions that are determined to involve financial injury to the borrower, Promontory's Senior Committee will recommend remediation to be made and/or compensation to be paid by the bank to affected borrowers. The results of the review of all complaints, including the nature of any exceptions and recommended remediation and/or compensation to be paid to the borrower will be logged by Promontory in the Foreclosure Review Report. Based on the Promontory recommendation, PNC will draft a response letter to the complainant. The letter will be reviewed by Promontory and sent by PNC.

#### **f. Reporting**

A reporting process on the outreach complaints will be developed by Rust and approved by the independent consultants. The source of the data will be the Rust data base. The MIS will be used to monitor workflow on a daily/weekly/monthly basis by PNC and Promontory and will also be used for internal and external (regulatory) reporting. Items to be included are:

- Number of complaints received;
- Type or Nature of complaint received;
- Number of complaints in-scope and out-of-scope;
- Number of complaints acknowledged;
- Number of complaints in process;
- Number of complaints not yet analyzed;
- Number of complaints responded to;
- Complaints disposition;
- Number of complaints requiring remediation;
- Number of complaints remediated;
- Aging reports as warranted; and

- Comments section to provide for other pertinent information.

Complaints received directly by the bank will be reported separately and be based on the monitoring systems currently in place within the Complaint function. Reporting to the regulators will include both complaints received as a result of the outreach and those received directly by the bank and determined to be in-scope.

**g. Documentation**

Documentation of the complaint process will be maintained in the [REDACTED] [REDACTED] which is the same data base being used by Promontory to document the Lookback Review. Reporting information will initially be maintained on the Rust data base, but at the completion of the process will be transferred to the [REDACTED]. Copies of the data in the [REDACTED] will be provided to the OCC and PNC at the completion of the Foreclosure Review. Information will be archived per PNC’s existing policies and procedures. The [REDACTED] will include copies of the original complaints, documentation of the file review, conclusions on exceptions and any proposed remediation.

**5. Test Standards**

Promontory will rely on test standards drawn from a variety of sources. Table A-6 summarizes the sources of the test standards that Promontory will apply in performing the Foreclosure Review:

Table A-6

**Sources of Foreclosure Review Test Standards**

Standard Type	Source
State Law and Federal law	State law research performed by Hudson Cook and Bingham McCutchen law firms.
Mortgage terms	Promontory review of relevant loan documents
Reasonableness, customariness, excessiveness	FNMA, FHLMC, FHA and VA servicer guidelines where not otherwise established by law

**6. Preparation and Submission of Report**

Consistent with the requirements of Article VII of the OCC Order, Promontory will provide PNC and the OCC with a final report (the “Foreclosure Report.”). The Foreclosure Report will

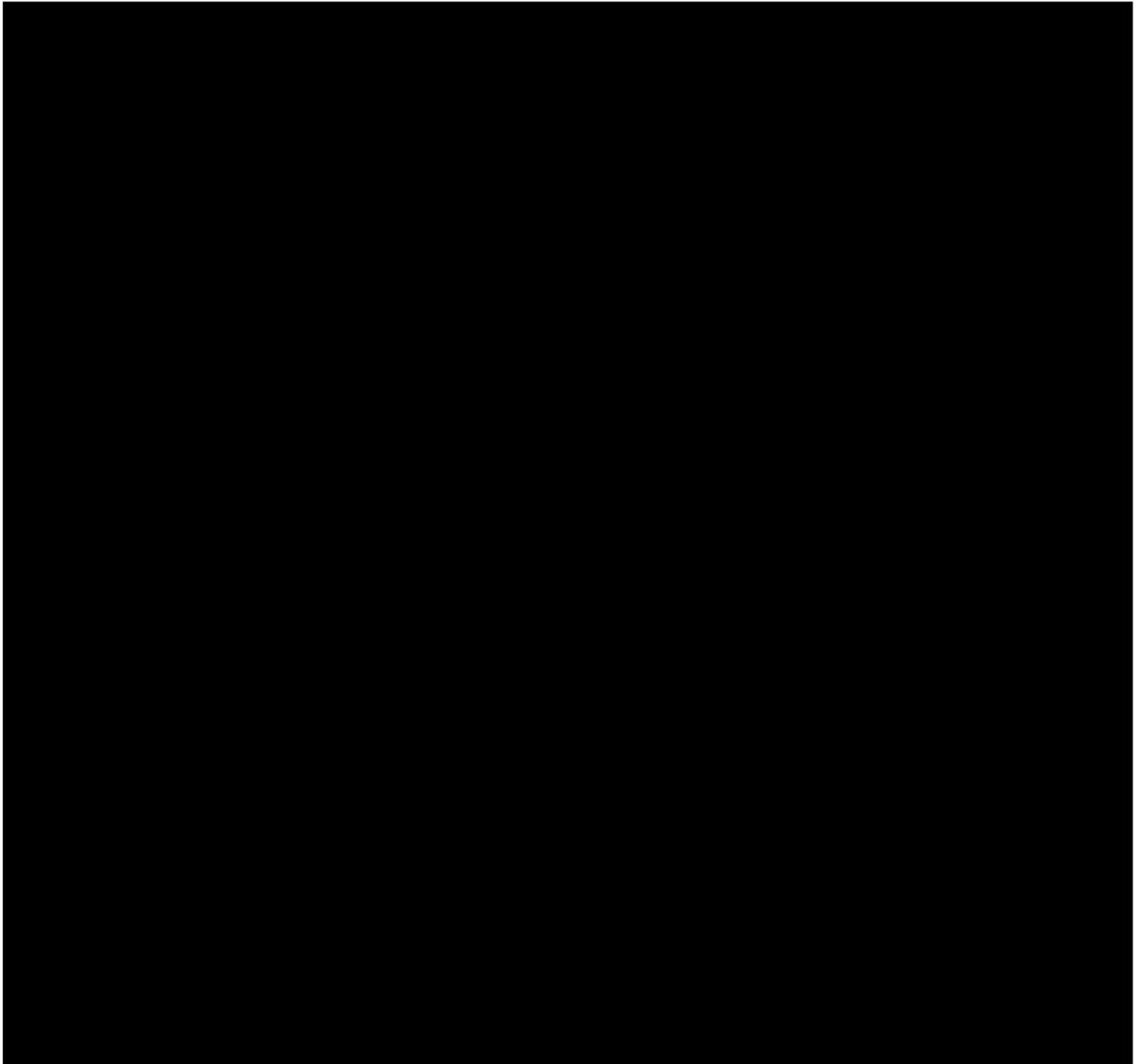
include a summary and analysis of the file exceptions found during the Foreclosure Review, together with detail appropriate to support the development of a remediation plan, including the identity of each borrower determined by Promontory to have been financially injured and the details on how the borrower was financially injured. The report will recommend remediation to be made and/or compensation to be paid to the borrower.

## Attachment B

### Promontory's Past Work with PNC

Promontory has performed several previous engagements for PNC. Promontory and PNC believe this experience gives Promontory institutional knowledge of PNC that will contribute to the success of the Foreclosure Review, and that Promontory's history of engagement with PNC does not present a level of conflict that would be likely to compromise Promontory's independence in performing the Foreclosure Review.

Promontory's previous engagements with PNC over the period 2009 through 2011 include:





## **Exhibit 1 to Attachment A Definition of Financial Injury**

### **OCC and FRB Guidance - Financial Injury or Other Remediation**

The April 13, 2011 Consent Orders require the Independent Consultants (ICs) to make certain findings in conjunction with the Foreclosure Reviews and to prepare a report of their findings (“Foreclosure Report”).<sup>4</sup> The Consent Orders first require the IC to make a determination as to whether the servicer committed any “errors, misrepresentations, or other deficiencies” (as defined in Section II); and second, whether any such errors, misrepresentations, or other deficiencies “resulted in financial injury” to the borrower or mortgagee/owner of the mortgage loan. For this purpose, “financial injury” to the borrower or the mortgagee is defined as monetary harm directly caused by errors, misrepresentations or other deficiencies identified in the Foreclosure Review. Monetary harm does not include physical injury, pain and suffering, emotional distress or other non-financial harm or financial injury that did not result as a direct consequence of errors, misrepresentations or other deficiencies identified in the Foreclosure Review. However, financial injury does include monies actually expended by the borrower or mortgagee that directly relate to the foreclosure action, proceeding, or sale and otherwise would not have been required but for the error, misrepresentation or other deficiency by the servicer identified in the Foreclosure Review.

The Consent Orders require each institution to submit a plan, subject to approval by the OCC and/or FRB, to compensate or remediate financially injured borrowers, based on the findings contained in the IC’s Foreclosure Report. While the Consent Orders contemplate compensating harmed borrowers who have suffered financial injury, the Orders also contemplate remedial action other than, or in addition to, compensation in other appropriate circumstances. As such, for each file reviewed in the Foreclosure Review, the IC must first identify (and include in the Foreclosure Report) their findings regarding any servicer error, misrepresentation, or other deficiency. The IC must then identify (and also include in the Foreclosure Report) any financial injury that has been suffered by the borrower as a result of the identified error, misrepresentation, or other deficiency and any financial injury that may be suffered by the borrower absent action by the servicer to remediate or cure the identified error, misrepresentation, or other deficiency. The IC Foreclosure Report must include recommended remediation to be made and/or compensation to be paid by the institution to borrowers who the IC has identified as having suffered financial injury or who may suffer financial injury.

The following scenarios provide guidance as to what may constitute financial injury that requires compensation to the borrower or where other borrower remediation by the servicer may be required to avoid financial injury. These scenarios are not exhaustive, and should be viewed as setting forth the principles that ICs should apply when determining financial injury attributable to errors, omissions, or other deficiencies by the servicer. The IC’s determination regarding the presence or absence of financial injury or whether compensation or other remediation is required must, of course, take into account and be based on the specific facts and circumstances surrounding each borrower’s individual case.

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<sup>4</sup> See Article VII paragraphs 3(a)-(g) and (4) for the OCC Consent Orders; Paragraphs 16(a)-(g) and 17 for the Consent Orders issued to the institutions that were previously subject to regulation by the OTS; and Paragraphs 3(a) and (b) for the FRB Consent Orders.

## **I. Financial Injury Present or Other Remediation Required**

Errors, misrepresentations, or other deficiencies that may result in financial injury and may require compensation to the borrower or action by the servicer to remediate or cure the error, misrepresentation, or deficiency, include the following. The OCC and FRB stress that this list is not intended to be exhaustive, but rather contains examples highlighting the principles that the ICs should use when assessing financial injury. In these examples, if a sale of the borrower's home already has occurred, the IC must determine whether the servicer should compensate the borrower for financial injury and if any other action by the servicer is required to remediate or cure the error, misrepresentation, or deficiency. If the sale has not yet occurred, the IC must also determine whether any payment to compensate for financial injury or other action by the servicer is required to remediate or cure the error, misrepresentation, or deficiency.

- 1) The borrower was not in default pursuant to the terms of the note and mortgage at the time the servicer initiated the foreclosure action.
- 2) The servicer initiated foreclosure or conducted a foreclosure sale in advance of the time allowed for foreclosure under the terms of the note and mortgage or applicable state law.
- 3) The borrower submitted payment to the servicer sufficient to cure the default pursuant to the terms of the note and mortgage, but the servicer returned the payment in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering payments when in default.
- 4) The servicer misapplied borrower payments, did not timely credit borrower payments (including failure to properly account for funds in suspense), or did not correctly calculate the amount actually due from the borrower, in contravention of the terms of the note and mortgage, state or federal law, investor requirements, or the servicer's stated policy covering application of payments.
- 5) The borrower paid a fee or penalty that was impermissible, as defined in Section II.
- 6) A deficiency judgment was obtained against the borrower that included the assessment of a fee or penalty that was impermissible, as defined in Section II.
- 7) The servicer placed an escrow account on the borrower's mortgage and the placement resulted in monies paid by the borrower into escrow in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering escrow accounts.
- 8) The servicer placed insurance on the borrower's mortgage and the placement resulted in monies paid by the borrower towards insurance in contravention of the terms of the note or mortgage, state or federal law, or the servicer's stated policy covering placed insurance.

- 9) The servicer miscalculated the amount due on the mortgage and secured a judgment against the borrower for an amount greater than the borrower owed.
- 10) A borrower's remittance of funds to a third party acting on behalf of the servicer (e.g. law firm) was not credited to the borrower's account.
- 11) The borrower was performing under the terms of an approved trial loan modification or an approved permanent loan modification, but the servicer proceeded to foreclosure in contravention of the terms of the modification offered by the servicer to the borrower.<sup>5</sup>
- 12) A borrower was denied a modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.
- 13) There is evidence that the borrower provided or made efforts to provide complete documentation necessary to qualify for a modification within the period such documentation was required to be provided by the governing modification program and the servicer denied the loan modification in contravention of the terms of the governing modification program or the servicer's stated policy covering modifications.
- 14) The servicer initiated foreclosure or completed a foreclosure sale without providing adequate notice as required under applicable state law.
- 15) The servicer foreclosed on or sold real property owned by an active military servicemember in violation of the Servicemembers Civil Relief Act (SCRA). (This provision applies to loans originated before the servicemember's active military service and prohibits foreclosures and foreclosure sales of such property at any time during the borrower's period of active military service and for 9 months thereafter, unless an exception applies pursuant to the SCRA).
- 16) The servicer did not lower the interest rate in accordance with the requirements of the SCRA on a mortgage loan entered into by a military servicemember, or by the servicemember and his or her spouse jointly. (This provision applies where the borrower provided written notice of military service pursuant to the SCRA for loans originated before the borrower entered into military service; the effective rate on the loan must be lowered to a rate not in excess of 6% per year during the borrower's period of military service and for 1 year thereafter, unless an exception applies pursuant to the SCRA).
- 17) The servicer failed to honor a borrower's bona fide efforts to redeem a sale under applicable state law during the redemption period.

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<sup>5</sup> The requirement for the Independent Consultants, pursuant to this Guidance in connection with the Consent Order Foreclosure Review, to evaluate and make determinations regarding financial injury in circumstances where a borrower is denied a federal or proprietary loan modification is not intended to suggest that the borrower has a legal right or entitlement to receive a loan modification from the servicer.

- 18) The borrower was protected by the automatic stay under the bankruptcy code and a court had not granted a request for relief from the automatic stay or other appropriate exception under the bankruptcy code.
- 19) The borrower was making timely pre-petition arrearage payments required under an approved bankruptcy plan and was current with their post-petition payments.
- 20) The borrower: 1) purchased a borrower payment protection plan; 2) was or should have been receiving benefits under the plan; and 3) those benefits were not applied pursuant to the contract terms.
- 21) The servicer was not the proper party, or authorized to act on behalf of the proper party, under the applicable state law to foreclose on the borrower's home and this resulted in or may result in multiple foreclosure actions or proceedings.
- 22) The servicer failed to comply with applicable legal requirements, including those governing the form and content of affidavits, pleadings or other foreclosure-related documents (to include improperly notarized documents or the practice of "robo-signing" generally), where such failure directly contributed to: (1) the borrower paying fees, charges, or costs, or making other expenditures that otherwise would not have been paid or made; or (2) the initiation of a foreclosure action or proceeding against a borrower who otherwise would not have met the requirements for initiating such an action or proceeding.

## II. Other Definitions

**"Certain residential foreclosure actions"** – The term "certain residential foreclosure actions" means foreclosure actions initiated or completed on owner-occupied, 1-4 family dwellings by divisions of the institution that process first lien mortgage foreclosures. This term includes mortgages secured by individual condominium dwelling units and individual cooperative housing units. This term also includes mobile homes, house boats, and other owner-occupied dwellings that are treated as "real estate" or "real property" under applicable state law pertaining to foreclosure.

**"Impermissible"** – The term "impermissible" as applied to a fee and/or penalty charged to a borrower's account, means a fee or penalty that is any one or more of the following:

- 1) Exceeds the limits established by applicable state law, federal law or the borrower's mortgage instruments, including as to type, amount, or sum of fees and/or penalties.
- 2) In the case of the OCC Consent Orders, is not "**reasonable and customary**," or a fee that is assessed at an "**excessive**" frequency. The term "**reasonable and customary**" as applied to a fee and/or penalty charged to a delinquent borrower's account means that institutions may only assess a fee for services actually rendered, and may only assess a fee or collect a monetary penalty that does not exceed the lesser of (a) any fee limitation or allowable amount for service under applicable

state or federal law; (b) any published, pre-established fee limitation or allowable amount for the service under the guidelines for the applicable government-sponsored enterprise investing in the loan or the government agency insuring the loan; and (c) the market rate for the service (as defined under the amount or rate that is “**customarily charged in the market for such fee or penalty**” below). The term “**excessive**” means any fee that exceeds the amount permitted by the borrower’s loan documents, by applicable state or federal law, or investor requirements. Excessive frequency of a fee means the same or a similar fee that is more than necessary or appropriate for completion of the underlying service.

- 3) In the case of the FRB Consent Orders, is “**otherwise unreasonable.**” A fee or penalty is “**otherwise unreasonable**” if it was assessed: (a) for the purpose of protecting the secured party's interest in the mortgaged property, and the fee or penalty was assessed at a frequency or rate, was of a type or amount, or was for a purpose that was in fact not needed to protect the secured party's interest; (b) for services performed and the fee charged was substantially in excess of the fair market value of the service; (c) for services performed, and the services were not actually performed; or (d) at an amount or rate that exceeds what is customarily charged in the market for such a fee or penalty, and the mortgage instruments or other documents executed by the borrower did not disclose the amount or rate that the lender or servicer would charge for such a fee or penalty.
  - i) A fee charged for services performed is not “**substantially in excess of the fair market value of the service**” if it exceeds by no more than 10 percent the maximum allowable fee under the “**applicable investor guide**” or, if there is no “**applicable investor guide**”, the guide published by Fannie Mae or Freddie Mac that would apply if Fannie Mae or Freddie Mac were the investor.
  - ii) A fee or penalty does not “**exceed**” the amount or rate that is “**customarily charged in the market for such fee or penalty**” if the fee or penalty does not exceed the maximum allowable fee under the “**applicable investor guide**” or, if there is no “**applicable investor guide**”, the guide published by Fannie Mae or Freddie Mac that would apply if Fannie Mae or Freddie Mac were the investor.
  - iii) “**Applicable investor guide**” means investor guides issued by Fannie Mae, Freddie Mac, the Veterans Administration, and the Department of Housing and Urban Development.

“**Errors, misrepresentations, or other deficiencies.**” The terms “errors, misrepresentations, or other deficiencies” means those matters discovered during the Foreclosure Review as set forth in Article VII(3)(a)-(g) of the OCC’s Orders, OTS Order paragraph 16(a)-(g), and Paragraphs 3(a)(i)-(vii) of the Board’s Orders. “Errors” includes miscalculation of fees or other charges, where the total aggregate miscalculated fees or charges applied to the borrower exceeds \$99.00.