



## Foreclosure Review Engagement Letter

August 31, 2011

[REDACTED]  
[REDACTED]  
Wells Fargo Bank, N.A.  
[REDACTED]

San Francisco, CA 94104

Dear [REDACTED]

This letter, if acceptable to and countersigned by you, and upon approval by the Office of the Comptroller of the Currency ("OCC"), will serve as the agreement ("Agreement") between Wells Fargo Bank, N.A. ("Wells Fargo") and Promontory Financial Group, LLC ("Promontory") governing Promontory's conduct of the Foreclosure Review required by Article VII of the consent order entered into by Wells Fargo and the OCC on April 13, 2011 (the "Consent Order").

Wells Fargo and Promontory agree that the purpose of the Foreclosure Review is to carry out all the requirements of Article VII of the Consent Order and, in particular, to identify borrowers who suffered financial injury as a result of any error, misrepresentation or other deficiency as defined in the Consent Order. Wells Fargo and Promontory believe that the activities outlined in this Agreement represent a comprehensive and robust process to achieve this purpose, based on what both parties know prior to commencement of the Foreclosure Review. However, they recognize that, during the course of the review, Promontory will gather and analyze information that may lead it to conclude independently that it must conduct additional investigation to ensure that the Foreclosure Review accomplishes its purpose. While this Agreement cannot explicitly incorporate such potential additional investigations, Wells Fargo and Promontory intend this Agreement to authorize them and, as far as practical, to govern their conduct.

Promontory and Wells Fargo believe both that a consultative working relationship is essential to the success of the Foreclosure Review and that the need to work consultatively must not and cannot interfere with Promontory's independence or relieve Promontory from its responsibility independently to determine analytical methods, perform independent analysis, reach independent conclusions, or in

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any other respect perform the Foreclosure Review as further detailed in this letter. Promontory will conduct the Foreclosure Review entirely independently of Wells Fargo, subject to the direction of the OCC and not Wells Fargo. Wells Fargo may not oversee, direct, or supervise the engagement, but this will not preclude Wells Fargo and Promontory from working consultatively, or Wells Fargo from communicating with Promontory as necessary both to identify opportunities to improve the operations of its foreclosure processes in light of information learned by Promontory through the performance of the Foreclosure Review, and to confirm that Promontory's performance of the Foreclosure Review complies with the requirements of the Consent Order. Promontory will be subject to review and oversight by the OCC at all stages of the Foreclosure Review, will regularly brief the OCC on the work being performed, and will follow comments and directions provided by the OCC.

#### **1. BACKGROUND**

*The Consent Order:* On April 13, 2011, Wells Fargo and the OCC entered into the Consent Order, which relates to the conduct of Wells Fargo's mortgage servicing business. Article VII of the Consent Order requires Wells Fargo, within 45 days of the date of the Consent Order, to retain an independent consultant to review certain residential mortgage foreclosures completed or initiated by Wells Fargo in calendar years 2009 and 2010 (the "Foreclosure Review") within 120 days following the OCC's approval of the independent consultant's retention.

[REDACTED]

*The Foreclosure Review Preparation SOW:* In anticipation of the Consent Order, and in accordance with the MSA, Wells Fargo and Promontory entered into a Statement of Work (the "Foreclosure Review Preparation SOW") that obligated Promontory to perform various planning and preparation tasks to ensure the smooth and effective conduct of the Foreclosure Review. Those tasks included the development of this Agreement.

#### **2. ORGANIZATION OF THIS AGREEMENT**

Section 3 of this Agreement sets forth its essential terms and conditions. Section 3.a sets forth an affirmative statement of the parties' intent to comply with the terms of the Consent Order. Section 3.b identifies the project name. Section 3.c describes the scope and timing of services to be provided by Promontory pursuant to this Agreement. Section 3.d describes the performance period. Section 3.e identifies work sites. Section 3.f identifies Attachment D as describing the fees that Promontory expects to charge Wells Fargo for services performed under this Agreement, as well as the costs for which Wells Fargo will reimburse Promontory. Section 3.g sets forth acceptance criteria. Sections 3.h and 3.i

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identify project managers. Section 3.j identifies subcontractors that Promontory intends to use. Section 3.k sets all other terms and conditions governing the conduct of this agreement. [REDACTED]

[REDACTED]

Article VII(2) of the Consent Order requires this Agreement to include four items. The table below summarizes those items and indicates the section and page of this Agreement that responds to each of them.

REQUIREMENT	AGREEMENT SECTION	PAGE
Methodology for conducting the File Review Process	Attachment A	A-i
Expertise and resources to be dedicated to the Foreclosure Review	Attachment C	C-i
Completion of the Foreclosure Review within one hundred twenty (120) days from approval of this Agreement	Section 3.d.ii.1	6
Commitment that any workpapers associated with the Foreclosure Review be made available to the OCC immediately upon request	Section 3.c.vi	5

Nine attachments provide important supplemental information and are integral to this Agreement:

**Attachment A** ("File Review Process and Methodology") sets forth the methodology Promontory intends to use in performing the File Review Process. In accordance with the terms of the Consent Order, Attachment A includes (i) a description of the information systems and documents that Promontory will review, including the selection of criteria for cases to be reviewed; (ii) the criteria Promontory intends to apply in evaluating the reasonableness of fees and penalties; (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for submission and review of borrower claims and complaints); and (iv) Promontory's proposed sampling techniques, including both a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of our sample depending on results of the initial sampling.

**Attachment B** ("Complaint Process and Methodology") sets forth the methodology Promontory intends to use in performing the Complaint Process. Attachment B describes how Promontory envisions that

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Wells Fargo, in coordination with other servicers, will promote the complaint opportunity to borrowers within the scope of the Foreclosure Review and the processes that Wells Fargo and Promontory will use to ensure that every complaint received from an in-scope borrower receives independent consideration and disposition.

**Attachment C** ("Resources and Expertise") describes the resources and expertise Promontory will use to complete the Foreclosure Review, including personnel and information systems. Attachment C further describes Promontory's plans for enlisting additional resources necessary to complete the Foreclosure Review in the event that initial sampling identifies needs for more extensive file review.

**Attachment D** ("Fees") describes the fees that Promontory expects to charge Wells Fargo for services performed under this Agreement, as well as the costs for which Wells Fargo will reimburse Promontory.

**Attachment E** ("Project Plan") provides a high-level Foreclosure Review Project Plan. The parties intend this Plan to be a working document, subject to periodic revision upon mutual agreement of the parties throughout the performance of services pursuant to this Agreement.

**Attachment F** ("Security and Access Provisions") describes certain additional understandings regarding system and facilities access, network connections, data safeguards, and related matters.

**Attachment G** ("Out of Pocket Expenses Reimbursement Policy") details certain additional understandings of the parties regarding reimbursement by Wells Fargo for out-of-pocket expenses incurred by Promontory in the course of performing services under this Agreement.

**Attachment H** ("Dispute Resolution Procedures") details the steps to be taken by the parties in resolving any dispute that may arise in regard to this Agreement.

**Attachment I** ("Conflicts of Interest Policy") details Promontory's policy on conflicts of interest.

### **3. TERMS AND CONDITIONS**

#### **a. COMPLIANCE WITH CONSENT ORDER**

The parties intend this Agreement to comply fully with the requirements of Article VII of the Consent Order and with all interpretive guidance the OCC may issue pursuant thereto. In the event that the OCC requires further refinement of this letter as a condition of its approval, the parties agree to work together in good faith to make refinements acceptable to the OCC.

#### **b. PROJECT NAME:**

Foreclosure Review

#### **c. SCOPE AND TIMING OF PROMONTORY SERVICES**

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**i. Foreclosure Review.**

Within the performance period set forth in section 3.d, Promontory will conduct an independent review ("Foreclosure Review") of certain residential foreclosure actions initiated or completed on owner-occupied, 1-4 family dwellings by divisions of the institution that process first lien mortgage foreclosures. Promontory's review shall include residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by Wells Fargo, whether brought in the name of Wells Fargo, 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.

**ii. Report of Findings.**

Within thirty (30) days of completing the Foreclosure Review, Promontory will prepare a written report detailing the findings of the Foreclosure Review ("Foreclosure Review Report"). Upon completion, Promontory will simultaneously deliver the Foreclosure Report to the members of the Board of Directors of Wells Fargo, to the Compliance Committee established in conformance with the Consent Order, to the OCC's Deputy Comptroller for Large Bank Supervision, to the OCC's Examiner in Charge of Wells Fargo, and to you.

**iii. Reporting.**

**1. Periodic Reports to Management.**

Promontory will report to Wells Fargo at regular intervals and in a form to be mutually agreed, no less than every fourteen (14) days, concerning the status of its performance of services under this Agreement. At a minimum, Promontory's reporting will identify any respects in which the accomplishment of milestones set forth in the Foreclosure Review Project Plan (Attachment E) is at risk, any need(s) for assistance from Wells Fargo, and any findings or observations believed by Promontory likely to warrant inclusion in the Foreclosure Report.

**2. Ad Hoc Reports to Management.**

Managing Directors assigned by Promontory to this engagement shall be reasonably available to Wells Fargo management by telephone, e-mail, or in-person for ad hoc consultations and status reports throughout the period of this Agreement.

**3. Reporting to the Board(s).**

Upon reasonable notice, Promontory will report to the Board of Wells Fargo & Co., the Board of Wells Fargo Bank, N.A., or any committee of such boards charged with oversight of Wells Fargo's efforts to comply with the Consent Order for the purpose of discussing the status of Promontory's provision of

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services pursuant to this Agreement and any findings or observations Promontory may have made in the course of providing such services.

#### 4. Reporting to the OCC.

If requested by Wells Fargo or the OCC, Promontory will meet with representatives of the OCC to discuss the status of the Foreclosure Review, the findings set forth in the Foreclosure Report, or any other matters germane to this engagement.

##### iv. Independence.

Promontory envisions a consultative working relationship with Wells Fargo, with the shared objective of identifying Wells Fargo borrowers within scope of the Foreclosure Review who have incurred financial injury attributable to errors, misrepresentations or other deficiencies within the scope of the Consent Order.

As independent consultant, Promontory will have sole responsibility for the methodology, findings and observations set forth in the Foreclosure Report. Promontory has confidence in its ability to conduct itself independently for five reasons.

First, Promontory has no ongoing relationship with Wells Fargo and does not act for Wells Fargo in any advocacy capacity. Beyond its current efforts to assist Wells Fargo in preparing for the foreclosure review, Promontory has no active engagement with Wells Fargo & Co. or any Wells Fargo subsidiary.

Second, Promontory's engagement is conducted under the oversight of the Wells Fargo Board of Directors and the independent Corporate Risk function, not the residential mortgage servicing area that is subject to review.

Third, none of Promontory's previous engagements with Wells Fargo relate closely to the subject matter of the Foreclosure Review. The Foreclosure Review will not require Promontory to evaluate or re-evaluate any of the findings and observations it has reached in prior engagements. Accordingly, Promontory's prior work with Wells Fargo is unlikely to affect Promontory's objectivity and thoroughness in performing the Foreclosure Review.

Fourth, as further described below, Wells Fargo has a history of engaging Promontory precisely for the purpose of providing independent advice. Several of Promontory's previous engagements with Wells Fargo involved the provision of advice directly to Wells Fargo's corporate risk management functions, internal audit function, and committees of the Board of Directors. Promontory and Wells Fargo agree that the success of the Foreclosure Review will require Promontory to conduct itself with a high degree of independence.

Finally, Promontory enjoys a large and growing clientele. The firm's economic success does not depend and never has depended on its business relationships with Wells Fargo.

**1. Independence of Consultant conducting Foreclosure Review**

Promontory agrees that the Foreclosure Review will comply with all requirements set forth in Article VII of the Consent Order issued to Wells Fargo on April 13, 2011, and that it will conduct the Foreclosure Review as separate and independent from any review, study, or other work performed by the Bank or its contractors or agents with respect to the Bank's mortgage servicing portfolio or the Bank's compliance with other requirements of the Consent Order, as set forth below:

- a. Conduct of the Foreclosure Review by Promontory shall not be subject to direction, control, supervision, oversight, or influence by the Bank, its contractors or agents. Promontory shall immediately notify the Office of the Comptroller of the Currency (the "OCC") of any effort by the Bank, directly or indirectly, to exert any such direction, control, supervision, oversight, or influence over the Independent Consultant, its contractors or agents.
- b. 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 Consent Order.
- c. 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.
- d. 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.
- e. 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 Bank employees, or contractors or agents retained by the Bank with respect to the Consent Order or with respect to matters addressed in the Consent Order, in order to conduct the Foreclosure Review, except where the OCC specifically provides prior written approval to do so.
- f. Subject to the requirements and restrictions of paragraph e above, including the requirement of specific approval by the OCC, Promontory may utilize documents, materials or other information provided by the Bank, and may communicate with the Bank, its contractors or agents, in order to conduct the Foreclosure Review.
- g. 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 the Bank's inside counsel, or from outside counsel retained by the

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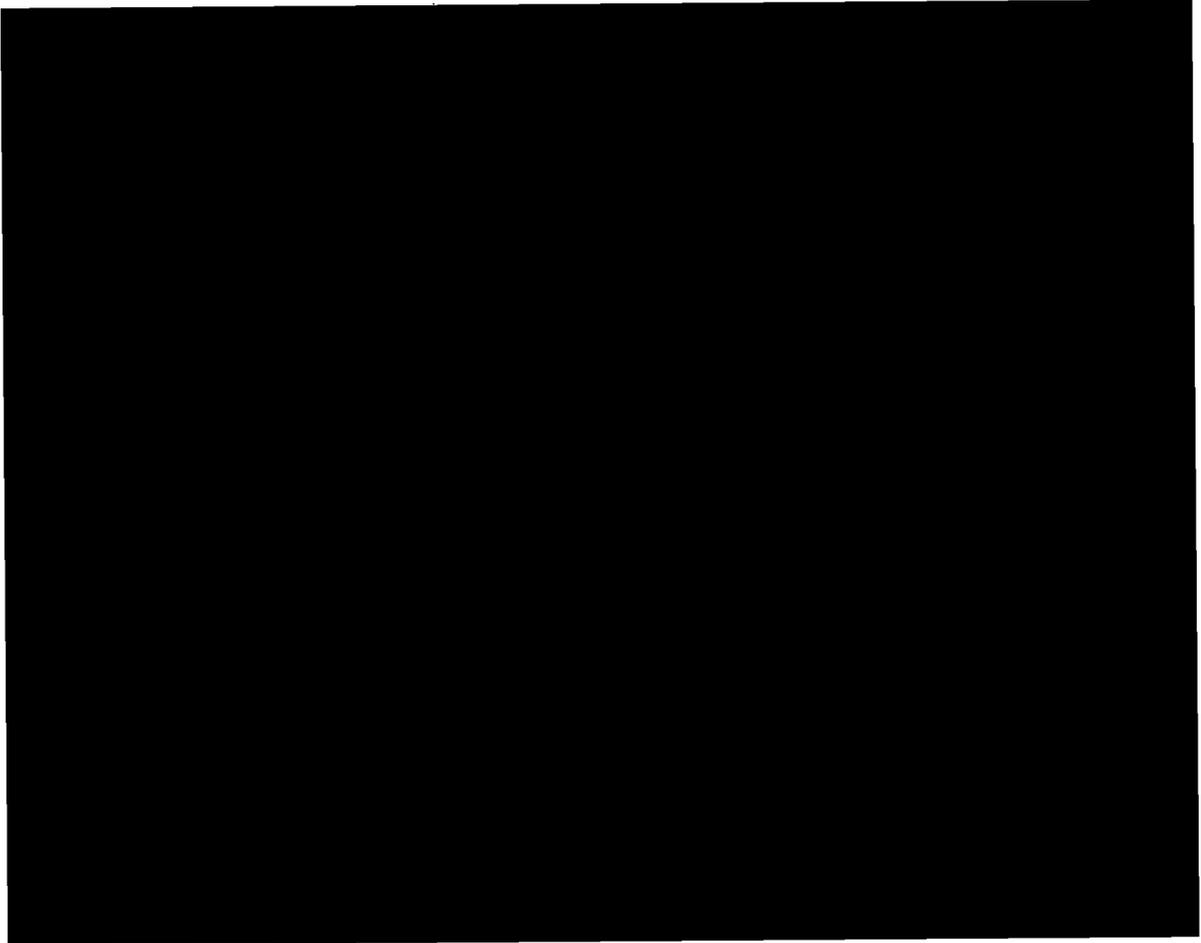
Bank or its affiliates to provide legal advice concerning the Consent Order or matters contained in the Consent Order.

- h. If the OCC determines, in its sole discretion, that Promontory has not been fully compliant with the foregoing standards (paragraphs a-g, above), the OCC may direct the Bank to dismiss Promontory and retain a successor consultant, in which case the Bank shall have no further obligation to Promontory other than for services performed up to that date for the Bank.

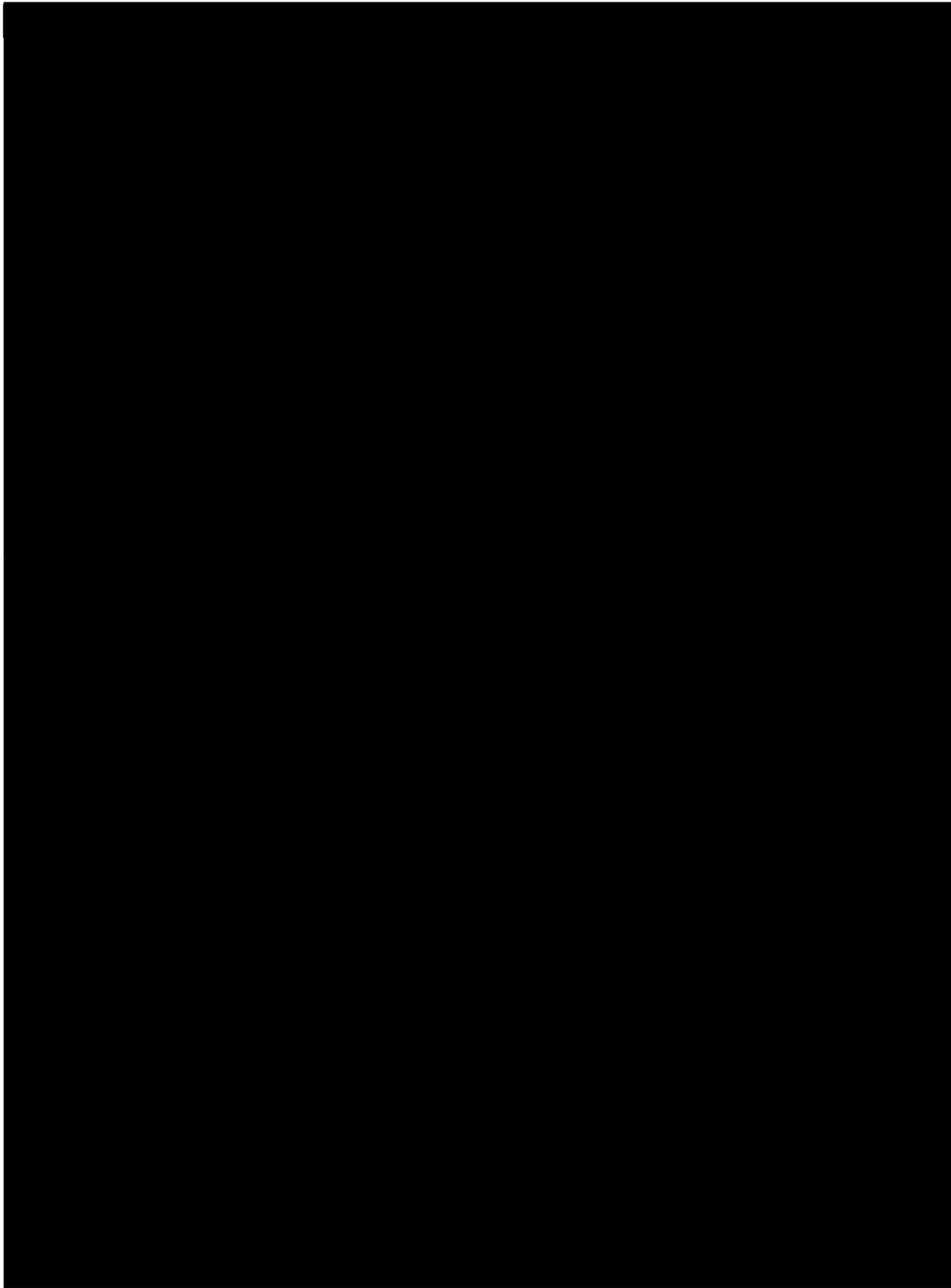
## **2. Promontory's Past Work with Wells Fargo**

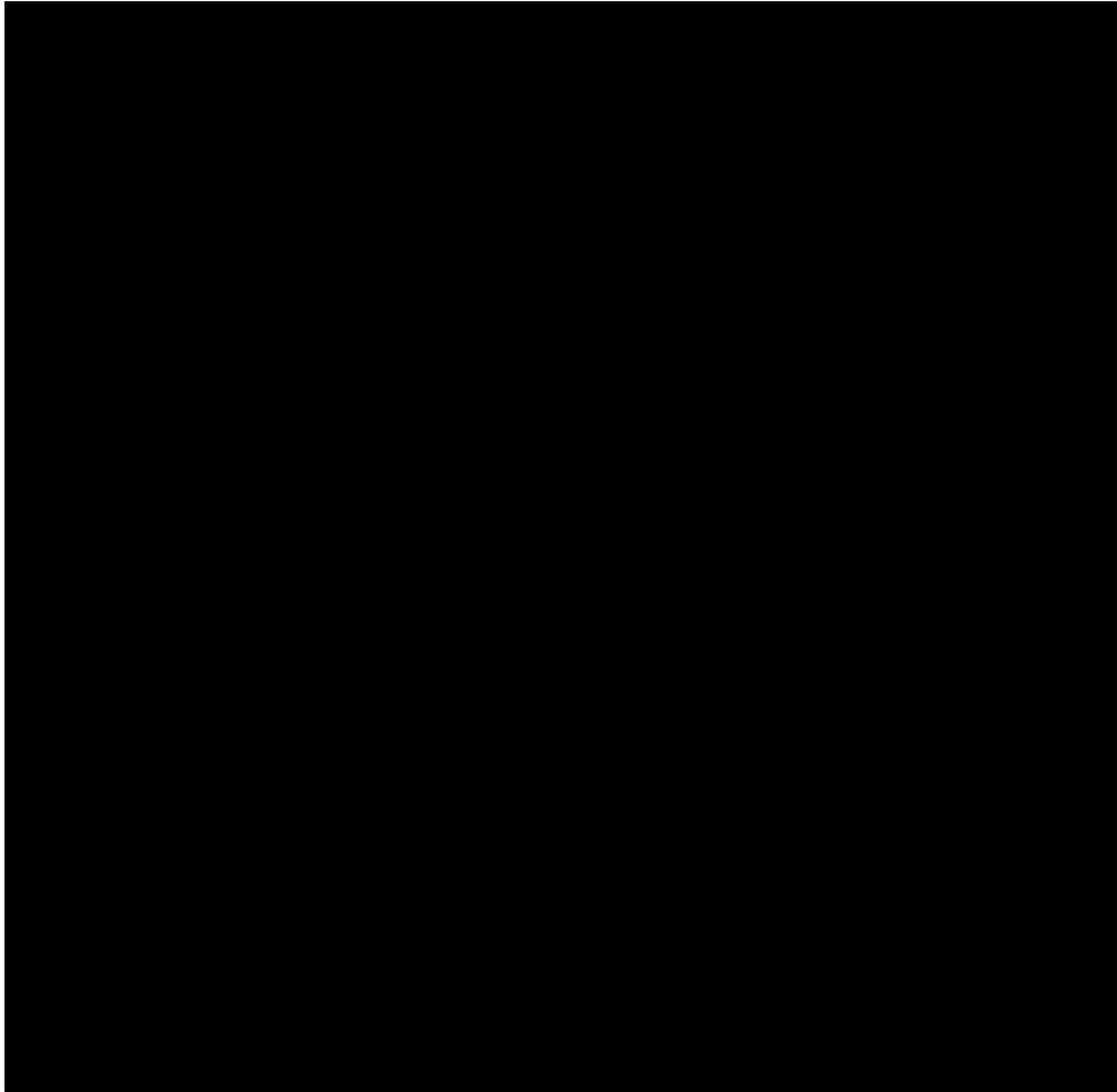
Promontory has performed several previous engagements for Wells Fargo. Promontory and Wells Fargo believe this experience gives Promontory institutional knowledge of Wells Fargo that will contribute to the success of the Foreclosure Review, and that Promontory's history of engagement with Wells Fargo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

Promontory's previous engagements with Wells Fargo include:



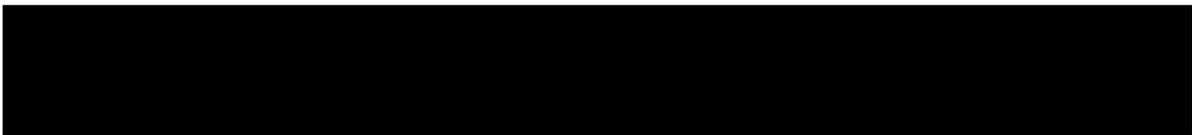
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**3. Actual or Potential Conflicts of Interest**

Promontory has been engaged by multiple clients to perform a variety of advisory services relating to the Consent Orders and related orders of the same date issued by the Federal Reserve Board of Governors. Promontory believes these clients share a common interest in complying fully with the requirements of the OCC and Federal Reserve, that their interests in this regard are not adverse, and that Promontory's work with them, accordingly, does not present a conflict of interest.



[REDACTED]  
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Promontory's Conflict of Interest Policy is attached to this agreement as Attachment I.

#### 4. Promontory Subcontractors

Promontory subcontractor Allonhill, LLC has never previously provided professional services to Wells Fargo and has no other assignment with Wells Fargo in progress or pending acceptance.

Promontory legal counsel Hudson Cook, LLP has represented Wells Fargo from time to time in connection with various consumer finance compliance matters. Wells Fargo has not retained Hudson Cook for any representation relating to the Consent Order or legal advice concerning Wells Fargo's obligations under that Order with respect to any corrective action that the Order may require Wells Fargo to take.

##### v. Workpapers.

Promontory will make all workpapers associated with performance of the Foreclosure Review available immediately upon the request of the OCC or Wells Fargo.

##### d. PERFORMANCE PERIOD

- i. **Start Date of the Engagement.** As of the date of the OCC's acceptance of or formal non-objection to this Agreement.
- ii. **Milestones.** As set out in this Agreement and the Consent Order and further detailed in Attachment E ("Project Plan"):
  1. Promontory will complete the Foreclosure Review within 270 days following OCC approval of this Agreement or such later date as the OCC may specify in response to a request for extension or otherwise;
  2. Promontory will complete the Foreclosure Review Report within 30 days following completion of the Foreclosure Review.
- iii. **End Date.** Upon the OCC's acceptance of or non-objection to the Foreclosure Review Report.

- e. **WORK SITE:** Promontory offices, Allonhill offices, additional rented space in [REDACTED] [REDACTED] or other locations as needed, and various Wells Fargo locations.

##### f. FEES

See Attachment D for a discussion of fees.

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**g. ACCEPTANCE CRITERIA**

Acceptance shall be subject to the Consent Order and any requirements placed on this engagement by the OCC.

**h. WELLS FARGO MANAGER**

[REDACTED]  
**i. PROMONTORY PROJECT MANAGER**

[REDACTED] See Attachment C for additional team members.

**j. PROMONTORY SUBCONTRACTORS**

Allionhill, LLC;

Hudson Cook, LLP and, in the event that Hudson Cook lacks sufficient resources to support this engagement, co-counsel or local counsel to Hudson Cook, subject to the approval of Wells Fargo and the OCC;

McDermott Will & Emery, LLP; and

Promontory Risk Review, LLP (a wholly-owned subsidiary of Promontory newly-formed for the purpose of supporting Promontory's foreclosure reviews and related work).

See Attachment C for additional details.

**k. Additional Terms and Conditions**

**i. Definitions**

1. **"Affiliates"** means Wells Fargo & Company and any present or future subsidiary thereof as defined under 12 U.S.C. §1841(d).
2. **"Confidential Information"** means any and all information, including trade secrets, know-how and proprietary information, techniques, plans or any other information relating to the business of a Party, including without limitation, work in process and information regarding a Party's present or future products, customers, employees, investors or affiliates and disclosed or otherwise supplied in confidence by the Party who disclosed the information ("Disclosing Party") to the other Party ("Receiving Party"), or received by the Receiving Party in the course of carrying out the tasks hereunder, or as a result of access to the premises of the Disclosing Party. This includes information furnished in the course of the provision of Services by Promontory, or related to discussions between the Parties in anticipation of this

Agreement or any particular scope of work under this Agreement. Confidential Information includes: (i) information disclosed in a written or other tangible form which is clearly marked with a "confidential" or "proprietary" legend or other comparable legend; (ii) information disclosed orally or visually which is identified as confidential at the time of disclosure and confirmed in writing within a reasonable time; (iii) any other information which a reasonable person would deem confidential under the context of disclosure or due to the nature of the information; and (iv) in the case of Wells Fargo, Customer/Consumer Information. Exceptions to the term "Confidential Information" are set forth in Section 3.k.vi.1.b (Exclusions).

3. **"Customer/Consumer Information"** means any and all information or data that is provided by, through or on behalf of Wells Fargo or any Affiliate to any Promontory Personnel, or is otherwise acquired by any Promontory Personnel in the course of performing Services under this Agreement that relates to any: (i) current, prospective or former customer (whether an individual, business entity, governmental unit, or otherwise) of Wells Fargo or any Affiliate, (ii) consumer of Wells Fargo or any Affiliate, (iii) nonpublic personal information of Wells Fargo or any Affiliate regarding its customers or consumers (within the meaning of Title V of the Gramm-Leach-Bliley Act and its implementing regulations, or any similar provision under any other applicable law), (iv) information subject to Section 628 of the Fair Credit Reporting Act and any regulations or guidelines adopted under those laws (or any similar provision under any other applicable law), or (v) information from which a customer or consumer's identity can be ascertained, either from the information itself or by combining the information with information from other sources.  
"Customer/Consumer Information" includes, but is not limited to, financial information, medical or health-related information. Examples are credit history, income, financial benefits, information in an application, loan or claim information, health information such as medical records, names or lists of individuals derived from nonpublic personally identifiable information or otherwise derived from Wells Fargo or an Affiliate, or the identification of an individual as a customer or as an individual claimant under a financial product or service provided by Wells Fargo or an Affiliate.
4. **"Deliverables"** means materials that Promontory will furnish to Wells Fargo as a result of the services performed under this Agreement, including, but not limited to the Foreclosure Review Report and the reports described above in Section 3.c.iv (Reporting).
5. **"Intellectual Property Rights"** means all patents (including originals, divisionals, continuations, continuations in-part, extensions, foreign applications, utility models and re-issues), patent applications, copyrights (including all registrations and applications therefor), trade secrets, service marks, trademarks, trade names, trade

dress, trademark applications and other proprietary and intellectual property rights, including moral rights.

6. "Services" means the services to be provided by Promontory under this Agreement.
7. "Promontory Personnel" means Promontory and each of its employees, along with any subcontractors or agents of Promontory, and any Dependent Provider (as defined in Section 3.k.ii.1.b.ii (Dependent Providers) below.)

## II. Standards for Performance of Services

### 1. Promontory Personnel

- a. **Independent Contractors.** Promontory may select its own Promontory Personnel, and these individuals will be and act under the exclusive supervision and control of Promontory, subject to the terms of this Agreement, including the Dependent Providers and individuals described in Section 3.k.ii.1.b (Subcontractors) below. The relationship between the Parties created by this Agreement is that of independent contractor and not partners, joint venturers, agents or employees. Promontory will ensure that all Promontory Personnel who perform Services under this Agreement comply at all times with the terms of this Agreement and all Statements of Work, and will be responsible for any failure of Promontory Personnel to so comply.
- b. **Subcontractors**
  - i. **Individuals.** Promontory may not use individuals who (i) are not employees of Promontory, or (ii) are in the United States pursuant to the L-1 category of visas (or any successor legislation or regulations), in the performance of Services, *unless* approved by Wells Fargo in a signed writing, which approval must be obtained prior to when the individual commences performing any aspect of the Services, and which approval will not be unreasonably withheld or unduly delayed.
  - ii. **Dependent Providers.** Promontory will rely on Allonhill, LLC for information technology support and subject matter expertise essential to Promontory's performance of the Services. Promontory will provide Wells Fargo with no less than ninety (90) days' notice of any intent to discontinue its reliance on Allonhill or to replace Allonhill with another vendor of such support, and will obtain Wells Fargo's prior written approval for any such change, which approval will not be unreasonably withheld or unduly delayed. Promontory has also engaged Hudson Cook, LLP, to provide legal advice regarding state

foreclosure laws. Promontory will also rely on Promontory Risk Review, LLP, a wholly-owned subsidiary of Promontory newly-formed for the purpose of supporting Promontory's foreclosure reviews and related work.

2. **Replacement.** Wells Fargo and Promontory will meet to discuss either party's concerns about the unsatisfactory performance or lack of the requisite skills of Personnel, and will use good faith efforts to resolve any issues so raised to both parties' reasonable satisfaction, including through replacement of Personnel. Notwithstanding the foregoing, Promontory shall have sole discretion to determine whether to replace its Personnel.
3. **Non-Exclusive.** The Parties acknowledge and agree that the procurement of Services under this Agreement will be on a non-exclusive basis and that neither Wells Fargo nor its Affiliates guarantees to Promontory any minimum amount of business other than as agreed herein. Promontory and Promontory Personnel may contract to perform similar services for others during the term of this Agreement, subject to Promontory's obligations under this Agreement.
4. **Non-Solicitation.** Neither Party will directly solicit for employment any employee of the other Party during the term of this Agreement or for three (3) months after its expiration or termination. If either Party directly solicits and then employs an employee of the other Party during this timeframe, the Parties will agree to a recruitment fee, which will not exceed Ten Thousand Dollars (\$10,000) for any single hiring. For the avoidance of doubt, neither Party is prohibited from employing an individual who approaches such Party about employment opportunities in response to a posting, employment advertisement, or other general solicitation of employment, whether such application is during the term of this Agreement or thereafter.
5. **Offshore Services.**
  - a. **Prior Approval Required.** Promontory will not perform any Services under this Agreement, whether directly or via a subcontractor, outside of the United States of America ("United States") without the prior written consent of a Wells Fargo Executive Vice President. In the event that Wells Fargo does not consent to a Promontory request to utilize Promontory Personnel resident or otherwise from outside the United States, Wells Fargo will indicate to Promontory the reasons therefore, and the parties will work in good faith to reach a mutually agreeable solution.
  - b. **Exceptions.** The foregoing restrictions of this Section 3.k.ii.5 (Offshore Services) shall not apply to (a) Promontory efforts to develop or modify Promontory's

commercially available software; (b) Promontory's telephone or email technical support of its products or services that does not require (i) access to Wells Fargo Confidential Information; (ii) access to or connectivity with Wells Fargo's computing environments, or (iii) direct communication with any Wells Fargo Customer or Consumer; and (c) Promontory's manufacture of commercially available goods.

**iii. Intellectual Property Rights**

1. **Wells Fargo's Data.** Promontory acknowledges and agrees that Wells Fargo shall retain all right, title and interest in and to all Wells Fargo Confidential Information, including all Intellectual Property Rights therein and any derivatives of Wells Fargo's Confidential Information or improvements to Wells Fargo's Confidential Information. Wells Fargo grants no licenses to Promontory to use the Wells Fargo Confidential Information other than for the purposes of performing Services hereunder, pursuant to the terms of this Agreement. The foregoing is not intended to prohibit Promontory, in the conduct of its business from developing, creating or reducing to practice derivative works or improvements to any know-how gained while providing services to Wells Fargo or from using Residual Information (as defined in Section 3.k.iii.5 below).
2. **Promontory's Technology.** The Parties agree that whereas Promontory provides services to multiple clients and works on an ongoing basis to improve the Promontory Technology for the benefit of all clients, all right, title and interest, including Intellectual Property Rights, in and to the Promontory Technology, whether conceived, developed, enhanced, reduced to practice or otherwise created before, during or after the term of this Agreement are and shall remain the sole and exclusive property of Promontory. For purposes of this Agreement, "Promontory Technology" shall mean any and all templates and other formats, checklists, methodologies, risk calculators, other diagnostic tools, and other information, inventions, discoveries) innovations, improvements and works of authorship conceived, developed, enhanced, reduced to practice or otherwise created by or on behalf of Promontory, and any derivative works thereof or improvements thereto, whether or not expressed in Deliverables. Promontory Technology specifically excludes Wells Fargo Confidential Information, and Promontory will not use any Promontory Technology in a manner that reveals to an unauthorized third party any Wells Fargo Confidential Information in violation of this Agreement. Promontory hereby grants to Wells Fargo the right and license (which is fully paid-up) to use the Promontory Technology as required to receive the Services for Wells Fargo's own internal business operations and activities, including the use of any software that may be required to access the Promontory Technology, or use the Services, via the

Internet or otherwise which Promontory owns or for which Promontory has the right to assign or to grant sublicenses; it being understood that (a) the foregoing license includes the right to provide copies of Deliverables containing any Promontory Technology to government authorities and to other third parties solely in connection with work they are performing for Wells Fargo, but not for further publication or distribution by such third parties; and (b) the foregoing license does not permit Wells Fargo to sell, sublicense or assign the Promontory Technology to any unaffiliated third party, which is expressly prohibited. Notwithstanding the foregoing, in the event that the provision of any Services require the modification of Promontory Technology for the sole use of Wells Fargo, the Parties will address the scope of the requested Promontory Technology modification, the related fees for such modification, and applicable ownership and license rights with respect to any such modified Promontory Technology in a writing that will be negotiated and executed by an authorized representative of each Party.

3. **Wells Fargo Technology.** The Parties agree that all Intellectual Property Rights in and to the inventions, discoveries, or innovations developed by Wells Fargo prior to or during the term of this Agreement that are embodied in the products and processes utilized by Wells Fargo in its own internal business operations or its business activities undertaken with current or prospective customers, consumers or service providers ("Wells Fargo Technology"), along with Wells Fargo's or its agents' improvements to that technology and any derivative works of such technology, are and shall remain the sole and exclusive property of Wells Fargo.
4. **Ownership.** Except as noted herein with respect to the Promontory Technology in Section 3.k.iii.2 above, or as set forth in Section 3.k.iii.5 below, the Parties agree that Wells Fargo is the sole and exclusive owner of the Deliverables.
5. **Exclusions.** Each Party may, during the course of the performance of Services by Promontory for Wells Fargo, discover or learn information or develop knowhow of general application regarding the subject matter of the Services, which discovery, information or know-how would not deprive the other Party of any vested proprietary rights in any system, process or other business operation disclosed to such Party ("Residual Information"). Each party is entitled to use Residual Information it learns from the other Party without the need to seek the approval of the other Party or pay any compensation for such Residual Information. The limited permission set forth in this Section 3.k.iii.5 does not permit intentional memorization of the other Party's Confidential Information for the sole purpose of evading obligations contained in this Agreement, or the unlicensed use of a party's "Technology" (as such term is defined in Sections 3.k.iii.2 and 3.k.iii.3, above). Each Party agrees to instruct its personnel on the obligations under this Section.

Notwithstanding anything to the contrary in this paragraph, nothing contained in this Section 3.k.iii.5 gives the recipient of the Residual Information the right to disclose, publish or disseminate: (a) the source of the Residual Information; (b) any financial, statistical or personnel data of the other Party; (c) the business plans of the other Party; or (d) in the case of Promontory, the Customer/Consumer Information of Wells Fargo.

**iv. Pricing and Payment**

1. **Payment Terms.** Promontory will invoice Wells Fargo on a monthly basis for Services actually rendered. Promontory will comply with all invoicing procedures reasonably requested by Wells Fargo, including any requests that invoices be centralized through a single Wells Fargo office, or, in certain instances, for separate invoices by Wells Fargo accounting unit ("AU"), Itemization on consolidated invoices, and that regular and customary charges be differentiated (so that any "extra" charges – i.e., overtime, services outside the scope of what is specifically contracted for, or related expenses – are apparent to Wells Fargo). Promontory will ensure all invoices are accurate, include appropriate identification and AU numbers, and are delivered to the proper individual or business unit. Promontory acknowledges that submission of invoices more than ninety (90) days late may result in significant delays in payment of those invoices by Wells Fargo. Wells Fargo will pay the undisputed amounts in any Promontory invoice no later than thirty (30) days after Wells Fargo's receipt of such invoice, and any additional amounts in respect of disputed amounts fifteen (15) days after the dispute has been settled to the Parties' mutual satisfaction.
2. **Rates and Overtime.** Promontory will comply with all applicable state and federal wage and hour laws with respect to the payment of overtime to Promontory Personnel, but Promontory will not charge Wells Fargo any additional amounts for overtime unless Wells Fargo previously authorized the overtime in writing.
3. **Expenses.** Promontory will be reimbursed for all actual and reasonable travel and living expenses, telecommunications charges, duplicating and other document production charges and delivery service charges ("Expenses") that are incurred by Promontory while performing Services under this Agreement, if the Expenses are (i) in accordance with Wells Fargo's standard reimbursement policy set forth in Attachment G [REDACTED], (ii) Wells Fargo has approved in advance the general parameters of the Expenses (e.g., travel to a place certain on a date certain), and (iii) reflected in Promontory's invoice; its being understood that notwithstanding Promontory's obligation to submit invoices on a monthly basis, Promontory will submit invoices for expenses incurred during the preceding month with the next

invoice submitted after receipts or other documentation of such expenses become available.

4. **Taxes.** On its invoices, Promontory will itemize amounts for any and all sales, use, excise, value-added, or goods and services taxes due under federal, state, local, or foreign law that are associated with the Services or Deliverables rendered by Promontory under this Agreement (but specifically excluding taxes in the nature of ordinary personal property taxes assessed against or payable by Promontory, taxes based upon Promontory's net income, Promontory's corporate franchise taxes and the like) (collectively, the "Taxes"). Wells Fargo will pay or reimburse Promontory for all Taxes and Promontory will remit those amounts to the appropriate taxing authority, and keep appropriate records of the assessment and payment of the Taxes. Promontory will be exclusively liable for any penalties, interest and other charges of any jurisdiction and any other fees or costs arising from Promontory's failure (i) to assess, or timely assess, any applicable Taxes (although Wells Fargo will remain liable for the underlying Taxes that Promontory should have assessed), or (ii) to remit any amounts for Taxes it has collected from Wells Fargo.

**v. Security**

1. **Compliance with Wells Fargo Standards.** It is not contemplated that Promontory will have access to Wells Fargo's secure facilities or information systems, or to "Restricted" Confidential Information of Wells Fargo (e.g., symmetric encryption keys, passwords, etc.), in a manner that would necessitate information security planning processes. However, Promontory will have access to Wells Fargo facilities and Confidential Information. Therefore, Promontory, for itself and Promontory Personnel, will comply with all of Wells Fargo's requirements in relation to the security of the Wells Fargo facilities and Confidential Information that have been provided to Promontory in writing in advance. This obligation includes the obligation of all Promontory Personnel performing the Services, wherever located, to comply with the terms of (i) Attachment F [REDACTED] which document may be updated and revised by Wells Fargo from time-to-time; (ii) any Wells Fargo security or information processing requirements set forth in this Agreement; or (iii) in a mutually agreed upon information security procedures between the Parties. Security measures for a given set of Services may be changed by Wells Fargo from time-to-time, and Promontory will abide by any Wells Fargo security measures that are communicated to Promontory in writing in advance. Notwithstanding the foregoing, upon receipt of written notice from Wells Fargo of changes to information security or other security measures or requirements, including, without limitation, or written notice of changes to [REDACTED] [REDACTED] Promontory shall have fifteen (15) business days in which to review such

changes and if Vender cannot comply with such changes, then Promontory may notify Wells Fargo in writing and may terminate this Agreement.

2. **Promontory's Program.** Promontory will implement such security measures as it deems reasonably necessary to comply with its general obligations in this Section 3.k.v (Security) in order to control and mitigate the risks of loss, theft or disclosure of any Wells Fargo Confidential Information or Wells Fargo Technology to which Promontory has access in relation to the Services, and in a manner commensurate with the sensitivity of the Services and such information and technology.
3. **Risk Assessments.** Wells Fargo reserves the right to conduct, at its cost, an initial risk assessment prior to commencing Services to determine the risks associated with the Services to be performed. Depending on the results of this assessment, Wells Fargo may also conduct, at its cost, a site audit, source code audit, or other risk evaluations of the operations of Promontory Personnel, but these sorts of evaluations are not generally anticipated by the Parties in the ordinary course of Wells Fargo receiving Services from Promontory. Promontory Personnel will cooperate with Wells Fargo in such initial assessment, and any subsequently required evaluations, in order to permit Wells Fargo to evaluate the ability of Promontory Personnel to comply with Wells Fargo internal policies and procedures in relation to the Services initially contemplated, including information security. This process will apply with equal force to any modifications to the initial Services procured, and also to any subsequent Services procured by Wells Fargo under this Agreement.

## vi. Confidentiality

### 1. Mutual Obligations

- a. **Standards.** Confidential Information of the Disclosing Party will be maintained in confidence by the Receiving Party, who will safeguard this information using the same degree of care as it uses to safeguard its own Confidential Information, but in no case less than a reasonable degree of care. Subject to the terms of this Agreement, the Receiving Party will limit (a) access to the Disclosing Party's Confidential Information to those of its employees, officers, subcontractors and agents with a need to know such Confidential Information for the performance of obligations under this Agreement, and (b) use of the Disclosing Party's Confidential Information for the exclusive purpose of fulfilling its obligations under this Agreement. Confidential Information of the Disclosing Party is and will remain the sole and exclusive property of the Disclosing Party, and the Receiving Party has no right in or to the Disclosing Party's Confidential Information.

- b. **Exclusions.** Except for Customer/Consumer Information (which will always remain as Confidential Information without exception), Confidential Information will not include information to the extent that: (a) such information is or becomes publicly available other than through any act or omission of either Party in breach of this Agreement; (b) such information was received by the Receiving Party other than under an obligation of confidentiality from a third party, which third party had no obligation of confidentiality to the Disclosing Party; or (c) such information was in the possession of the Receiving Party at the time of the disclosure, or was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. The burden of proof that Confidential Information falls into any one of the above exemptions will be borne by the Party claiming such exemption(s).

## 2. Mutual Obligations

- a. **Generally.** Promontory acknowledges that Wells Fargo's Confidential Information includes both "Confidential Information" (defined in Section 3.k.i.2 above) and "Customer / Consumer Information" (as defined in Section 3.k.i.3 above). Promontory and Wells Fargo will only provide the other party's Confidential Information to its respective Personnel after Promontory or Wells Fargo, as the case may be, has (a) informed each individual or legal entity of the confidential nature of the information and of the obligation to maintain its confidentiality, and (b) it has procured a written agreement from each such Personnel to maintain the confidentiality of the other party's Confidential Information, it being understood that such Personnel's obligation of confidentiality may be expressed in the form of a written agreement applicable generally to the confidentiality of information belonging or pertaining to parties with whom Promontory or Wells Fargo, as the case may be, does business.
- b. **Safeguards.** Promontory maintains commercially reasonable safeguards against the destruction, loss, alteration of or unauthorized access to its clients' confidential information, including, without limitation, Wells Fargo's Confidential Information in the possession of Promontory Personnel, which safeguards include policies for the disposal/destruction of any such data that are commensurate with the sensitivity of the materials to be disposed, but are otherwise in accordance with the terms of this Agreement regarding the return and/or destruction of Wells Fargo's Confidential Information.
- c. **Encryption.** Promontory acknowledges that Wells Fargo Confidential Information, in particular Customer/Consumer Information, may, in accordance with Wells Fargo information security policies, require encryption and/or other

information security controls when it is transmitted over a network, or is stored, processed or managed on equipment belonging to Promontory Personnel (including portable equipment such as laptops and other portable devices), whether this equipment is used at a Wells Fargo site or elsewhere, and Promontory agrees to conform to such encryption policies, pursuant to the terms of Section 3.k.v.1 (Compliance with Wells Fargo Standards), above.

3. **Legal Proceedings.** In the event a subpoena or other legal process is served upon the Receiving Party that, pursuant to the requirement of a judicial authority, governmental agency or law of the United States or any state thereof (or any governmental or political subdivision thereof), requires the disclosure of either Party's Confidential Information disclosed hereunder, to the extent practicable and legally permissible, the Receiving Party will notify the Disclosing Party promptly upon receipt of such subpoena or other request for legal process (unless such notice is prohibited by applicable law, rule Or regulation), and will cooperate with the Disclosing Party, at the Disclosing Party's expense, in any lawful effort by the Disclosing Party to contest the legal validity or scope of such subpoena or other legal process.
4. **Third Party Proprietary Information.** No Party will disclose any information to the other Party that it actually knows to be the proprietary or confidential information, or trade secret, of a third party, except as permitted by the license or other terms of use under which the Disclosing Party received such information from the third party. Each Party will take all reasonable steps necessary to ensure the fulfillment of this obligation.
5. **Injunctive Relief.** The Receiving Party acknowledges it would be difficult to fully compensate the Disclosing Party for damages that may result from the breach or threatened breach of the foregoing provisions and, accordingly, that the Disclosing Party will be entitled to seek injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce such provisions. This provision with respect to injunctive relief will not, however, diminish the Disclosing Party's right to claim and recover damages.
6. **Publicity.** Except when disclosure is compelled pursuant to Section 3.k.vi.3 (Legal Proceedings), Promontory will not disclose the existence of this Agreement or the business relationship between Wells Fargo and Promontory to any outside third party without Wells Fargo's prior written approval, from a Wells Fargo Executive Vice President. This restriction includes, but is not limited to, using Wells Fargo's name, likeness or logo ("Wells Fargo's Identity"). By way of example and not limitation, Promontory will not use Wells Fargo's Identity, directly or indirectly, in conjunction

with any other clients of Promontory, any client list, advertisements, news/press releases or releases to any professional or trade publications, or in any document that Promontory plans to file with the Securities and Exchange Commission without the aforementioned approval.

7. **Background Checks.** Applicable law and regulatory guidance obligates Wells Fargo to ensure that no person who has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has participated in a pre-trial diversion with respect to such an offense, or who has been convicted of a felony within the last ten (10) years, participates in the provision of Services that (i) require access to Customer/Consumer Information, or (ii) require access to Wells Fargo's computer networks, information systems, databases or secure facilities under circumstances that would permit modifications to such systems. Subject to applicable law, prior to the performance of any Services pursuant to this Agreement in which the aforesaid access in items (i) and/or (ii) is required, Promontory will conduct or cause to be conducted third-party criminal background checks on all Promontory Personnel assigned to perform such Services (whether these individuals are employees of Promontory or fit within the other categories within the defined term "Promontory Personnel"), such background checks to include screening assigned Promontory Personnel against the Specially Designated Nationals and Blocked Persons list published by the Office of Foreign Assets Control of the U.S. Department of the Treasury (the "OFAC List"). Wells Fargo may require that Promontory provide written evidence of successful background checks conducted under this section at any time. In the event that Promontory does not comply with the terms of this Section 3.k.vi.7, Wells Fargo will have the right, in its sole and absolute discretion, to terminate this Agreement immediately. In the event that Services that require background checks pursuant to this section are to be performed by Promontory Personnel or any Dependent Provider outside the United States, Wells Fargo may impose reasonable, additional or different background check requirements on the use of such Individuals, which requirements will be communicated to Promontory in writing.
8. **Security Breach.** In the event of any actual or suspected security breach Promontory either suffers or learns of that either compromises or could compromise Wells Fargo's Confidential Information, including Customer/Consumer Information (e.g., physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a PC (laptop or desktop), loss/theft of printed materials, etc.) (collectively, an "IT Security Breach"), Promontory will immediately notify Wells Fargo security personnel of such Security Breach at the following 24-hour phone number: 800-947-4915 (or other number provided by Wells Fargo to Promontory in writing from time to time),

and will immediately coordinate with Wells Fargo security personnel to investigate and remedy the Security Breach, as directed by such Wells Fargo security personnel. Except as may be required by applicable law, Promontory agrees that it will not inform any third party of any such Security Breach without Wells Fargo's prior written consent, which consent will not be unreasonably withheld or delayed; provided, however, if such disclosure is required by applicable law, then to the extent practicable and legally permissible, Promontory will notify Wells Fargo promptly upon receipt of any subpoena, disclosure order or other request for legal process (unless such notice is prohibited by applicable law, rule or regulation), and will cooperate with Wells Fargo, at Wells Fargo's expense, in any lawful effort by Wells Fargo to contest the legal validity or scope of such subpoena, disclosure order or other legal process. Promontory will maintain records of any known or suspected security breaches in accordance with its information security practices, and will make such records reasonably available to Wells Fargo upon request.

9. **Disclosure to Regulators.** Notwithstanding anything herein to the contrary, upon prior written notice to Promontory, Wells Fargo may disclose to any federal or state bank examiner, or other regulatory officials having jurisdiction over Wells Fargo, the Confidential Information of Promontory, at the advice of Wells Fargo counsel.

**vii. Warranties**

1. **Compliance.** Promontory represents and warrants to Wells Fargo that: (i) the entering into and carrying out of the terms and conditions of this Agreement will not violate or constitute a breach of any obligation legally binding upon Promontory; and (ii) Promontory will comply with all applicable international, federal, state and local laws (and all corresponding regulations/directives) in connection with its performance under this Agreement. Wells Fargo represents and warrants to Promontory that the entering into and carrying out of the terms and conditions of this Agreement will not violate or constitute a breach of any obligation legally binding upon Wells Fargo.
2. **Performance.** Promontory represents and warrants that it will provide competent Promontory Personnel with sufficient skill, knowledge, and training to perform the Services for Wells Fargo that are set forth in this Agreement, and that such Promontory Personnel will perform such Services in a diligent and professional manner, and the Services and any Deliverables will comply with the performance specifications set forth in this Agreement, as the same may be modified by mutual agreement of the parties from time to time in writing. Except as may be authorized by the terms of this Agreement, Promontory warrants that the performance of the Services will take place solely within the United States.

3. **Relationship.** Promontory will monitor, supervise and direct Promontory Personnel in the performance of the Services for Wells Fargo. Promontory represents and warrants that: (i) Promontory is an independent contractor and Promontory Personnel assigned to provide Services under this Agreement will not be, nor be deemed to be for any purpose, an employee or agent of Wells Fargo; (ii) each Promontory Personnel assigned to provide Services to Wells Fargo under this Agreement will be and remain an employee, independent contractor or subcontractor of Promontory for the entire period such person is providing Services to Wells Fargo hereunder;; (iii) that Wells Fargo has no obligation whatsoever to provide Promontory Personnel with liability or health insurance, or any other benefits provided to Wells Fargo employees; (iv) Promontory is solely responsible, at its own expense, for complying with all laws, rules and regulations or any governmental authority having appropriate jurisdiction relating to Promontory's employment activities, including immigration, payroll and income taxation, workers compensation, disability and unemployment insurance, certification, documentation, and maintenance; and (v) that Promontory Personnel will not claim benefits from Wells Fargo under Wells Fargo's employee benefit plans, or under applicable unemployment or workers' compensation laws for any injuries sustained by Promontory Personnel while performing Services. Promontory acknowledges that it is solely responsible for the payment of compensation to Promontory Personnel, including the payment, withholding and transmittal of all applicable taxes and insurance, unemployment contributions and workers' compensation contributions. Additionally, Promontory represents that it assumes full responsibility for processing unemployment and workers' compensation claims involving Promontory Personnel.
4. **Warranty Pass-Through.** In the event that Promontory procures hardware, software or other materials related specifically to its performance of the Services ("Related Products"), Promontory hereby assigns to Wells Fargo all assignable warranties provided by the manufacturer(s) and/or licensor(s) of such Related Products; however, if the warranties provided by the respective manufacturers and/or licensors of such Related Products cannot be so assigned, Promontory will cooperate with Wells Fargo and assist in Wells Fargo's receipt of appropriate warranty support with respect to the Related Products. No Related Products disclaimer or limitation of liability will relieve Promontory of its obligations to deliver the Services or any Deliverables pursuant to the standards set forth in this Agreement.
5. **Authority.** Promontory represents and warrants to Wells Fargo that (i) it has full power and authority to grant the rights granted by this Agreement to Wells Fargo with respect to the Services and any Deliverables without the consent of any other person or entity; (ii) its execution and delivery of this Agreement and Promontory's

[REDACTED]  
Wells Fargo Bank, N.A.  
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performance or compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any license, sublicense, lease, contract, agreement or instrument to which Promontory is bound or to which Promontory's properties are subject; and (iii) there are no pending or threatened lawsuits, actions or any other legal or administrative proceedings against Promontory which, if adversely determined against Promontory, would have a material adverse affect on Promontory's ability to perform its obligations under this Agreement. Wells Fargo represents and warrants to Promontory that (i) its execution and delivery of this Agreement and Wells Fargo's performance or compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any license; sublicense, lease, contract, agreement or instrument to which Wells Fargo is bound or to which Well Fargo's properties are subject; and (ii) there are no pending or threatened lawsuits, actions or any other legal or administrative proceedings against Wells Fargo which, if adversely determined against Wells Fargo, would have a material adverse affect on Wells Fargo's ability to perform its obligations under this Agreement. Each of Wells Fargo and Promontory represent and warrant to the other that: (x) this Agreement has been validly executed and delivered, (y) this Agreement constitutes the legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and, with regard to equitable remedies, to the discretion of the court before which proceedings to obtain those remedies may be pending; (z) such Party has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and that the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all requisite corporate action on the part of such Party.

6. **Intellectual Property Warranty.** Promontory represents and warrants to Wells Fargo that: (i) all Deliverables and Services performed by Promontory will be the original work of Promontory (or duly licensed by Promontory for the purposes for which they are delivered) such that ownership may be granted as set forth in this Agreement; (ii) Promontory is the lawful owner or licensee of all technology used by it in the performance of the Services and creation of the Deliverables (except that technology provided by Wells Fargo); and (iii) if access to such technology is granted hereby, Promontory has the right to permit Wells Fargo access to or use of such technology. Promontory further warrants to Wells Fargo that to the best of Promontory's actual knowledge: (x) there is no claim, litigation or proceeding pending or threatened against Promontory with respect to the Services or Deliverables. or any component

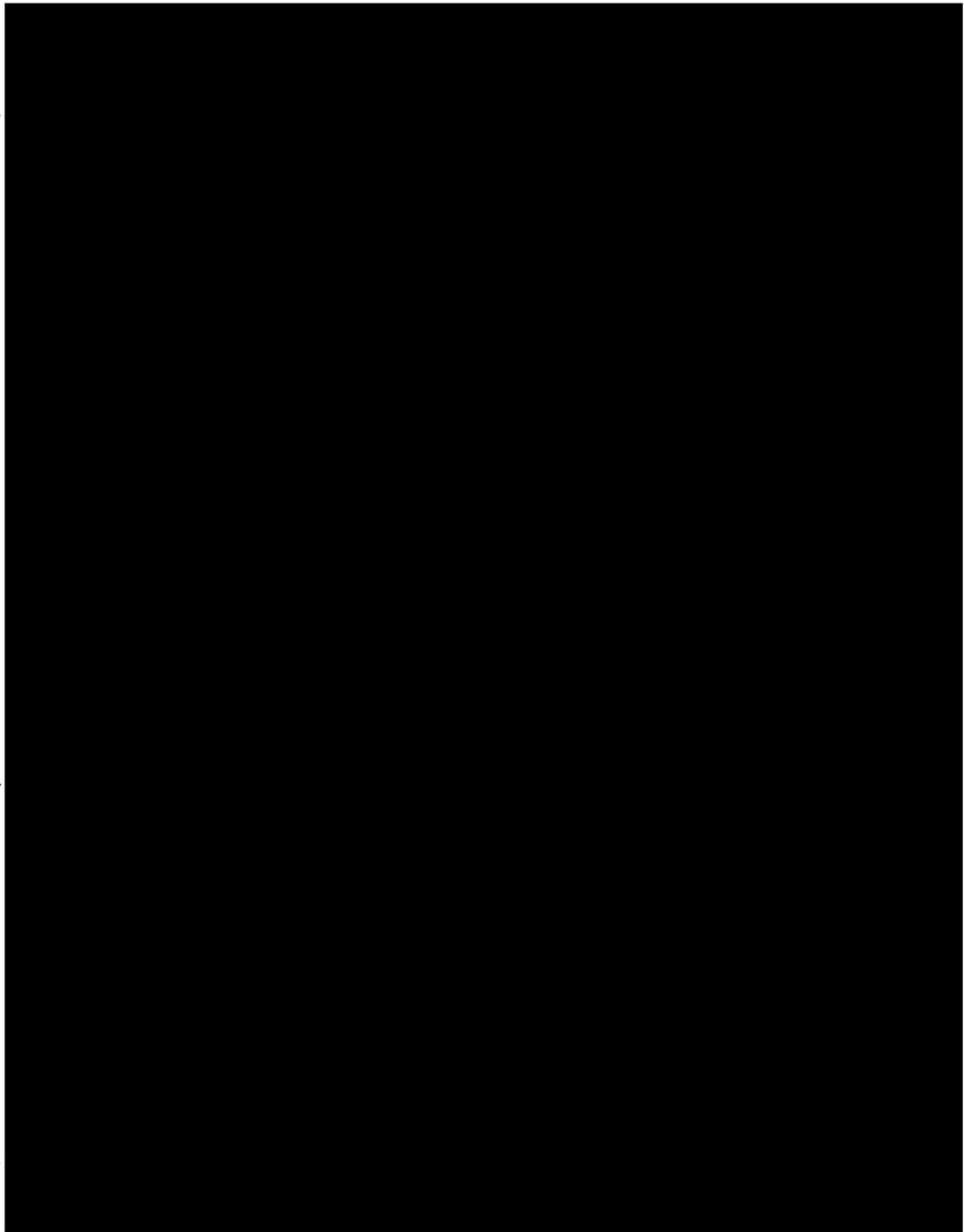
thereof, alleging infringement of any Intellectual Property Rights of any person or entity; and (y) neither the performance of the Services by Promontory nor the furnishing of the Deliverables, will in any way constitute an infringement or other violation of any Intellectual Property Rights, non-disclosure agreement, or other rights of any third party. Wells Fargo warrants to Promontory that to the best of Wells Fargo's actual knowledge: (i) there is no claim, litigation or proceeding pending or threatened against Wells Fargo with respect to the Wells Fargo Technology, or any component thereof, alleging infringement of any Intellectual Property Rights of any person or entity; and (ii) the furnishing of Promontory with access to the Wells Fargo Technology in connection with the Services, will not in any way constitute an infringement or other violation of any Intellectual Property Rights, non-disclosure agreement, or other rights of any third party. Without prejudice to any other rights of Wells Fargo against the Promontory, including any indemnification Obligations, if any Deliverable, or any part thereof, under this Agreement becomes, the subject of any claim, suit or proceeding for infringement of any Intellectual Property Rights. or if any Deliverable, or any part thereof, is held or otherwise determined to infringe any Intellectual Property Rights, Promontory will at its expense achieve the following results in the listed order of preference: (A) secure for Wells Fargo the right to continue using the affected product; or (B) replace or modify the product to make it non-infringing without degrading its performance or utility.

7. **Virus.** Promontory represents and warrants that any software code written by Promontory Personnel or materials furnished by Promontory to Wells Fargo will be free from: (a) any computer code or instructions that may disrupt, damage or interfere with Wells Fargo's use of its computer and/or telecommunication facilities, e.g. malicious code, viruses, etc., and (b) devices capable of automatically or remotely stopping the code from operating (e.g., passwords, fuses, time bombs, etc.).
8. Each of the foregoing warranties is continuous in nature and will be deemed provided by Promontory on the Effective Date hereof and throughout the term of this Agreement.
9. **Disclaimers.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROMONTORY DISCLAIMS ALL WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, OR SYSTEMS INTEGRATION. EXCEPT FOR PROMONTORY'S EXPRESS OBLIGATIONS IN THIS AGREEMENT, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT OF ANY

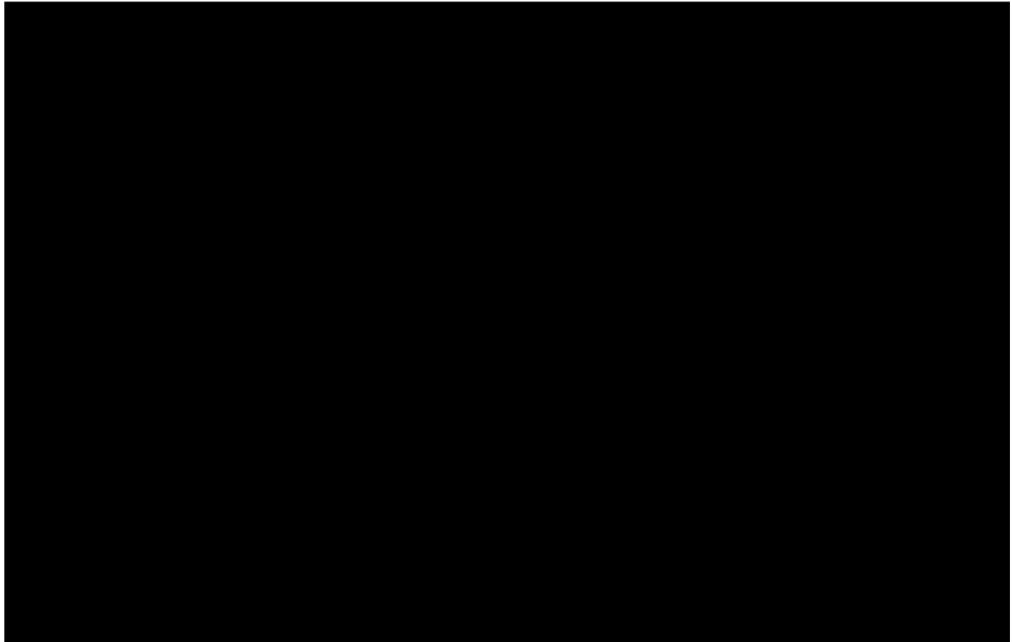
[REDACTED]  
Wells Fargo Bank, N.A.  
August 31, 2011

SOFTWARE AND ANY OTHER PRODUCT OR SERVICE THAT MAY BE PROVIDED SHALL  
BE WITH WELLS FARGO.

**viii. Indemnification**



[REDACTED]  
Wells Fargo Bank, N.A.  
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ix. **LIMITATION OF LIABILITY.**



x. **INSURANCE.** Without limiting Promontory's liability to Wells Fargo or its Affiliates under this Agreement, Promontory, at its sole cost and expense, will maintain comprehensive general liability insurance coverage in at least the amounts shown on the Certificate of Insurance [REDACTED]. During the term of this Agreement, Promontory will provide to Wells Fargo evidence of such coverage annually upon request.

xi. **TERM AND TERMINATION**

1. **General.** This Agreement commences on the Effective Date, and continues in full force and effect until terminated by either Party under the termination rights set forth in this Agreement.

## 2. Termination for Cause

- a. With prior OCC consent, Wells Fargo may terminate, in whole or in part, this Agreement for cause if: (a) Promontory breaches any material provision of this Agreement or repeatedly breaches any such provision; (b) Promontory generally fails to pay its debts as they become due, admits in writing its inability to pay its debts generally, makes a general assignment for the benefit of creditors or any proceedings are instituted by or against Promontory or Promontory takes any corporate action to authorize any of the actions set forth in this Section 3.k.xi.2; (c) Promontory breaches any of its obligations under Section 3.k.vi (Confidentiality) or Section 3.k.vii.6 (Intellectual Property Warranty); or (d) Promontory fails to comply with its reporting and remedy obligations related to Security Breaches, in accordance with the provisions of Section 3.k.vi.8 (Security Breach), and then fails to cure or remedy such breach within thirty (30) calendar days (but in the case of Security Breaches, within ten (10) calendar days) of receiving written notice from Wells Fargo specifying in reasonable detail the nature of such breach(es). Any termination pursuant to subsections (a) through (d) above will be effective as of the date specified in such termination notice, upon Wells Fargo providing Promontory with written notice of such termination pursuant to the terms of Section 3.k.xii.3 (Notice).
- b. With prior OCC consent, Promontory may terminate, in whole or in part, this Agreement for cause if Wells Fargo (a) violates a material provision of this Agreement or repeatedly breaches any such provision; breaches any of its obligations under Section 3.k.vi (Confidentiality) or Section 3.k.vii.6 (Intellectual Property Warranty); and fails to remedy or cure such violation within thirty (30) calendar days following written notice to Wells Fargo stating, with particularity and in reasonable detail, the nature of the claimed breach. Any termination pursuant to Section 3.k.xi.2, subsections (a) through (d) above will be effective as of the date specified in such termination notice, upon Wells Fargo providing Promontory with written notice of such termination pursuant to the terms of Section 3.k.xii.3 (Notice).
- c. Each Party acknowledges that any notice and cure period permitted will not operate or be construed as a waiver of any subsequent, similar or other breach.
- d. Notwithstanding termination, Wells Fargo shall timely pay Promontory's accrued and unpaid fees and reimbursable expenses through the effective date of termination. Wells Fargo will pay the undisputed amounts in any final Promontory invoice no later than thirty (30) days after Wells Fargo's receipt of

such invoice, and any additional amounts in respect of disputed amounts fifteen (15) days after the dispute has been settled to the Parties' mutual satisfaction.

3. **No Fault Termination.** If a court of competent jurisdiction or other administrative body empowered to issue such orders issues a final order or judgment holding that this Agreement or the Services offered hereunder, or some portion of the Services offered hereunder, are in violation of the law or if a Party is required to terminate the Services of this Agreement by law, regulation or bank regulatory authority due to objections regarding the third party relationship formed hereby ("Judgment"). In such event, either Party may terminate those portions of this Agreement that contravene such Judgment by providing the other Party with written notice of its intent to do so, which termination is effective as of the date specified in such notice.
4. **Termination without Cause.** With prior OCC consent, each of the Parties may terminate this Agreement without cause upon five (5) business days' prior written notice to the other Party (or payment in lieu thereof). Notwithstanding termination, Wells Fargo shall timely pay Promontory's accrued and unpaid fees and reimbursable expenses through the effective date of termination. Wells Fargo will pay the undisputed amounts in any final Promontory invoice no later than thirty (30) days after Wells Fargo's receipt of such invoice, and any additional amounts in respect of disputed amounts fifteen (15) days after the dispute has been settled to the Parties' mutual satisfaction.
5. **Mergers and Acquisition.** Wells Fargo or its Affiliates may acquire or merge with entities that, at the time of the closing of the acquisition or merger, have agreements in effect with Promontory. Wells Fargo, in its reasonable discretion, will have the right to terminate any and all of the acquired or merged entity's agreement(s), Statement(s) of Work, schedules or attachments with Promontory upon not less than thirty (30) calendar days' prior written notice to Promontory. Such termination will be without penalty or additional charge to Wells Fargo or the acquired or merged entity(ies), unless otherwise provided for in the agreement(s), Statement(s) of Work, schedules or attachments being terminated. Notwithstanding termination, Wells Fargo shall timely pay Promontory's accrued and unpaid fees and reimbursable expenses through the effective date of termination. Wells Fargo will pay the undisputed amounts in any final Promontory invoice no later than thirty (30) days after Wells Fargo's receipt of such invoice, and any additional amounts in respect of disputed amounts fifteen (15) days after the dispute has been settled to the Parties' mutual satisfaction.
6. **Effect of Termination.** Subject to each party's obligation to maintain certain records in accordance with applicable law (and then only for the time period required by

law), and further subject to applicable law or judicial or administrative order regarding the return or destruction of documents, materials and other information, in the event this Agreement is terminated by either Party, each Party will return or irretrievably destroy all Confidential Information of the other Party that it (or its subcontractors, including, in the case of Promontory, its Dependent Providers) has in its possession, including any information stored on computing equipment, and will provide the other Party with an officer's certificate attesting to such return or destruction. In the event that the Confidential Information of a Party has been commingled by the receiving Party with its own Confidential Information such that it cannot feasibly be separated for return or destruction, such commingled data will be protected by the Receiving Party as the Disclosing Party's Confidential Information. Further, the Parties will work to ensure the termination of Services or transfer of Services to another service provider selected by Wells Fargo (which may include Wells Fargo) is orderly and is non-disruptive to the business continuation of each Party, such cooperation to include, subject to applicable law or judicial or administrative order, the transfer of all records, files (including computer tapes and diskettes), and the latest versions of any Deliverables in progress upon the effective date of termination, in the format mutually agreed by the parties as applicable. However, if this transition has not been completed by the estimated termination date, Promontory will, at the request of Wells Fargo, continue to perform the Services on a month-to-month basis and be compensated for such Services as agreed under Section 3.k.iv (Pricing and Payment) above on the condition that Promontory has no obligation to provide the Services for longer than three (3) months from the estimated date of termination of this Agreement. In the event this Agreement is terminated by any Party for any reason whatsoever, Promontory will return to Wells Fargo any fees prepaid by Wells Fargo for which Services have not been rendered. Notwithstanding the foregoing, in the event Wells Fargo terminates this Agreement without cause, Wells Fargo will remain obligated to pay for all undisputed fees and expenses incurred prior to the effective date of termination. The Parties understand and agree that no termination of this Agreement will discharge or excuse completion of or performance of any liability or Services obligation herein undertaken or occurring prior to the effective date of such termination. In addition, the termination of this Agreement will not limit any other rights or remedies available to the terminating Party.

7. **User Access Termination.** Upon the effective date of termination of this Agreement for any reason, Wells Fargo will immediately terminate both Promontory's physical access to Wells Fargo facilities and access to all Wells Fargo computer systems or networks. In the case of a specific Promontory Personnel who is being removed or replaced, Wells Fargo will terminate such access to all Wells Fargo computer systems

or networks within 24 hours of written notice to Promontory regarding the event giving rise to the need for termination. In the event that Wells Fargo has permitted Promontory to control any aspect of Promontory Personnel's access to Wells Fargo facilities, computer systems or networks, then Promontory will terminate such access as of the effective date of termination of this Agreement.

8. **Survival of Certain Provisions.** In the event this Agreement is terminated, the provisions of Sections 3.k.iii (INTELLECTUAL PROPERTY RIGHTS), 3.k.vii (CONFIDENTIALITY), 3.k.ix (INDEMNIFICATION), 3.k.x (LIMITATION OF LIABILITY), and 3.k.xiii (GENERAL PROVISIONS) and Sections 3.k.v.4 (Taxes), 3.k.xii.6 (Effect of Termination), 3.k.xii.7 (User Access Termination) and 3.k.xii.8 (Survival of Certain Provisions) of this Agreement will survive such termination.

xii. **GENERAL PROVISIONS**

1. **Not Law Firm or Lobbyist.** Wells Fargo acknowledges and Agrees that Promontory is neither a law firm nor a lobbyist and that no part of the services to be performed pursuant to this Agreement shall constitute or is intended to constitute legal advice, the rendering of legal services, or lobbying activities.
2. **Acknowledgement.** Promontory provides services to multiple clients within the financial services industry. Wells Fargo acknowledges that these clients may be direct or indirect competitors of Wells Fargo (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 Wells Fargo hereunder (including assistance with enforcement actions based upon the findings of the interagency horizontal examination). Promontory anticipates that other similarly-situated mortgage servicers may retain it to assist with enforcement actions based upon the findings of the interagency horizontal examination. In such event, this Agreement envisions the creation of a central team, which will provide support to each engagement, including quality assurance, share information regarding regulatory expectations, methodologies, project planning, reporting formats, etc., and, where appropriate, may communicate with regulators on behalf of these clients. However, Promontory will not share confidential information of Wells Fargo with its other similarly-situated mortgage servicer clients, nor will Promontory share confidential information of its other similarly-situated mortgage servicer clients with Wells Fargo. [REDACTED]

[REDACTED] Notwithstanding the foregoing, Wells Fargo consents to Promontory's work for such clients subject to the confidentiality

[REDACTED]  
Wells Fargo Bank, N.A.  
August 31, 2011

obligations of the Agreement and waives any actual, potential or perceived conflict of interest that may arise from Promontory's work on this engagement. Notwithstanding anything to the contrary in the Agreement and solely for purposes of this Agreement, "Confidential Information" shall not include Information obtained from regulators that does not uniquely apply to Wells Fargo or Its affiliates.

3. **Notice.** All formal notices, consents and other communications hereunder must be in writing and will be deemed to have been duly given when delivered personally, or one (1) business day after being sent by a nationally recognized overnight courier with package tracking capabilities. Notice that is delivered via facsimile or electronic mail is sufficient to meet the notice requirement, provided it is: (i) confirmed as received by the other Party, or (ii) an original copy follows it, as set forth above. All notices should be sent to the following addresses and indicated contacts:

**WELLS FARGO:**

Wells Fargo Bank, N.A.

[REDACTED]

Charlotte, NC 28282

[REDACTED]

*With a copy to:*

Wells Fargo Bank, N.A.

[REDACTED]

San Francisco, CA 94104

[REDACTED]

*And to the Wells Fargo Engagement Manager.*

[REDACTED]  
Wells Fargo Bank, N.A.  
August 31, 2011

PROMONTORY:

Promontory Financial Group, LLC

[REDACTED]  
Washington, DC 20004  
[REDACTED]

*With a copy to the Promontory Engagement Manager.*

4. **Assignment.** Promontory will not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of Wells Fargo, which consent will not be unreasonably withheld; any unauthorized Promontory assignment or delegation will be null and void. Promontory will not be relieved of any of its obligations hereunder as a result of any assignment of this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties' successors and assigns.
5. **No Third-Party Beneficiaries.** Except as stated in this Agreement, Promontory and Wells Fargo intend that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.
6. **Modification and Waiver.** No modification of this Agreement and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of each Party. No waiver of any breach of this Agreement, and no course of dealing between the Parties, will be construed as a waiver of any subsequent breach of this Agreement.
7. **Severability.** The provisions of this Agreement are severable. If a court or arbitrator holds any provision of this Agreement invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions will in no way be affected or impaired thereby. If a court or arbitrator holds any such provision to be invalid or unenforceable, the adjudicating entity will replace that provision with a provision that is valid and enforceable, and most nearly reflects the intent of the original provision.
8. **Interpretation.** Each Party acknowledges that it has had the opportunity to read and review this Agreement with counsel, and that this Agreement has been the subject of active and complete negotiations, and that this Agreement may not be interpreted or construed in favor of or against any Party. Article and Section headings are provided for convenience only and are not to be used to construe or interpret this Agreement.

Wells Fargo Bank, N.A.  
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However, if the terms "article(s)" and/or "section(s)" are used in reference to any legislation, statute or regulation, then the reference is deemed to include all related articles or sections within the same legislation, statute or regulation (as such articles and/or sections may be amended from time to time). Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

9. **Contrary, Inconsistent, or Additional Terms.** Any pre-printed terms and conditions on any materials that Promontory regularly uses with its other customers (e.g., order forms, invoices, browse-wrap or click-wrap terms and conditions) will be null and void and of no consequence whatsoever in interpreting the Parties' legal rights and responsibilities as they pertain to any of the contemplated Services provided hereunder.
10. **Consents.** Except as expressly agreed by the Parties, or as provided in A Section 3.k.vi (CONFIDENTIALITY), wherever this Agreement requires either Party's approval, consent or satisfaction, such approval, consent or satisfaction may not be unreasonably or arbitrarily withheld or delayed.
11. **Governing Law.** This Agreement will be construed as having been made in, and will be governed in accordance with the laws of, the State of California, excluding any applicable conflict of law provisions.
12. **Remedies upon Default.** Unless specifically set forth in this Agreement, in the event of breach by either Party, the non-breaching Party will be entitled to exercise any and all rights and remedies available to it at law or in equity, whether concurrently or separately, and the exercise of one remedy will not be deemed either an election of such remedy or a preclusion of the right to exercise any other remedy. Without limiting the generality of the foregoing, either Party may offset any fees it owes to the other Party against amounts it is otherwise owed.
13. **Dispute Resolution.** Subject to the terms of Section 3.k.vi.5 (Injunctive Relief) and Section 3.k.xii.12 (Remedies upon Default) set forth above, any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to, this Agreement (each, a "Dispute") will be resolved expeditiously, amicably, and at the level within each Party's organization that is most knowledgeable about the disputed issue, in compliance with the procedures outlined in Attachment H [REDACTED] attached hereto. Notwithstanding such procedures, the Parties do not intend for the procedures outlined in Attachment H [REDACTED] to supplant the routine handling of inquiries and complaints through informal

[REDACTED]  
Wells Fargo Bank, N.A.  
August 31, 2011

contact with customer service representatives or other designated personnel of the Parties.

14. **Audit.** Promontory Personnel will cooperate in providing to Wells Fargo or its auditors (including any federal or regulatory auditors with jurisdiction over Wells Fargo's operations, specifically, the Office of the Comptroller of the Currency ("OCC")) any information reasonably requested by Wells Fargo or its auditors that is necessary or required for the verification of performance of Services by Promontory Personnel under this Agreement in accordance with applicable law and the terms and conditions of this Agreement, provided that (i) such audits by Wells Fargo may only occur during normal business hours at the locations where Promontory Personnel perform Services or retain records, and only after providing reasonable notice to Promontory (not less than five (5) business days' notice), (ii) such inspections shall be conducted in a manner that is designed to minimize any adverse impact on normal business operations, (iii) Wells Fargo will comply with all standard safety and security procedures of Promontory in conducting any such audits, and (iv) any information accessed by Wells Fargo or its auditors in the performance of any such audit will be deemed to be the Confidential Information of Promontory; however, the results of the audit are the property of Wells Fargo, or the auditor, as applicable.
- [REDACTED]

**15. Records**

- a. **Services.** Subject to the terms of this Agreement, Promontory will retain all information obtained or created in the course of performance hereunder in accordance with applicable law (including the Sarbanes-Oxley Act), unless Wells Fargo has requested, in writing, that Promontory hold any such records for a longer period of time due to pending or threatened litigation obligations. The Parties agree that any such records maintained and produced by Promontory under this Agreement will be available, in English, during reasonable business

hours, for examination and audit by governmental agencies having jurisdiction over Wells Fargo's business, including all United States government agencies having regulatory jurisdiction over Wells Fargo, and specifically the OCC. Wells Fargo acknowledges that the Director of Examinations of any Federal Agency or his or her designated representative will have the right to ask for and to receive directly from Promontory any reports, summaries or information contained in or derived from data in the possession of Promontory related to Wells Fargo under 12 USC 1867(e). Promontory will notify Wells Fargo of any formal request by an authorized governmental agency to examine Wells Fargo's records maintained by Promontory, if Promontory is permitted to make such a disclosure to Wells Fargo under applicable law or regulation. Wells Fargo agrees that Promontory is authorized to provide all such described records, upon advance written notice to Wells Fargo if allowed by law, when formally required to do so by an authorized governmental agency.

b. **Personnel.** With regard to: (a) the hire, tenure and conditions of employment of employees, their hours of work, the rates of and the payment of their wages; (b) the keeping of records and the making of reports; and (c) the payment, collection or deduction of federal, state and local taxes and contributions, Promontory will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things as may be required to fully comply with applicable federal, state and local laws, ordinances and regulations in regard to said matters so as to fully relieve Wells Fargo from and protect it against responsibility or liability therefore. Promontory will file a FORM 1099-MISC and all other reports required by law with respect to each subcontractor assigned to Wells Fargo.

16. **Execution.** To facilitate execution, this Agreement may be executed (i) pursuant to the process set forth in the Electronic Signatures in Global and National Commerce Act (15 USC §7001 et seq.), or (ii) in as many counterparts as may be required to reflect all Parties' assent; all counterparts shall collectively constitute a single agreement. A legible facsimile signature that can be authenticated will constitute an original and binding signature of a Party.

17. **Entire Understanding** This Agreement, including its Attachments A through I, constitutes the exclusive and entire agreement between the Parties with respect to its subject matter, and as of the Effective Date, supersedes all prior or contemporaneous agreements, negotiations, representations and proposals of any kind, whether written or oral, either express or implied, relating to this subject matter. This Agreement includes and integrates any properly executed attachments, including the exhibits and addenda.

[REDACTED]  
Wells Fargo Bank, N.A.  
August 31, 2011

IN WITNESS WHEREOF, Promontory and Wells Fargo, by the signatures of their duly-authorized representatives below, intending to be legally bound, agree to all the provisions of this Agreement.

Very truly yours,

[REDACTED]  
[REDACTED]  
Promontory Financial Group, LLC  
[REDACTED]

Attachments

Accepted for Wells Fargo Bank, N.A.

By: [REDACTED]

Title: [REDACTED]

Date: 9/1/11

## Attachment A File Review Process and Methodology

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## 1. Overview

The fundamental objective of the Foreclosure Review is to identify borrowers who have suffered financial injury through errors or other deficiencies in the foreclosure process, in order that their injury can be remediated. Achieving this objective presents numerous analytical and operational challenges.

At the highest level, Promontory expects to meet these challenges through a combination of two strategies:

- *Review of individual loan files combined with data analysis to build an increasingly clear understanding of both the types of borrowers most likely to have incurred financial injury and the specific borrowers who were injured (the "File Review Process").* Promontory will begin by reviewing large populations of files selected at random, as well as additional populations selected because they have characteristics that could suggest a heightened probability of error in the foreclosure process. Combining the data captured through its initial review effort with data already available through Wells Fargo, Promontory will refine its statistical analysis iteratively. As the types of borrowers most likely to have suffered financial injury come into focus, Promontory will review all files of those types in order to find the specific borrowers in need of remediation.
- *Borrower outreach, complaint intake, and analysis (the "Complaint Process").* In parallel with the File Review Process, Promontory will leverage Wells Fargo resources to execute a process through which borrowers who claim they have suffered financial injury can self-identify by submitting a complaint. Well Fargo will communicate the opportunity to complain to borrowers within the scope of the Foreclosure Review pursuant to a communication plan approved by Promontory, relying primarily on a combination of direct outreach by mail and supporting mass media advertising. Promontory will independently review and determine the disposition of every germane complaint received in response to this outreach.

In combination, Promontory believes these strategies represent a sound and credible way to achieve the purposes of the Foreclosure Review.

This attachment details how Promontory intends to execute the File Review Process. A separate document, Attachment B, details how Promontory intends to execute the Complaint Process. Although both documents represent the product of many weeks of planning and analysis, Promontory expects that both methodologies will continue to evolve throughout the course of the Foreclosure Review as new information, further analysis, and additional

regulatory guidance continue to inform our understanding of how best to achieve the Foreclosure Review’s fundamental objective. Promontory will consult closely with both the OCC and Wells Fargo in regard to every material change to the methodology described here.

## 2. Scope of review

### a. Proceedings

As required by Article VII(1) of the Order, the Foreclosure Review will encompass “certain residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by Wells Fargo, whether brought in the name of Wells Fargo, 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 liens secured by owner-occupied, one-four family dwellings serviced by divisions of Wells Fargo that process first lien mortgage foreclosures.

### b. Portfolios

Wells Fargo maintained four in-scope mortgage servicing portfolios during the period January 1, 2009 to December 31, 2010. Table A-1, below, provides further detail.

Table A-1

#### In-scope Proceedings by Portfolio

Portfolio name	Completed foreclosures	In process foreclosures	Total
Wells Fargo Home Mortgage (WFHM)	281,466	495,629	777,095
Wells Fargo Financial (WFF) <sup>1</sup>	7,063	13,904	20,967
Wachovia Mortgage San Antonio (WMSA)	24,741	77,536	102,277
Wells Fargo Home Equity (WFHE)	4,893	27,770	32,663
<b>Total</b>	<b>318,163</b>	<b>614,839</b>	<b>933,002<sup>2</sup></b>

The combined total of 933,002 records represents the total population of foreclosure proceedings completed or in process in calendar 2009 and 2010.<sup>3</sup>

<sup>1</sup> Includes NowLine.

<sup>2</sup> During the development of earlier drafts of this engagement letter, the OCC asked Promontory to reconcile the total population to the OCC’s Mortgage Metrics database. This reconciliation effort became part of the data validation process, described in section d, below.

<sup>3</sup> The total number of files in scope has changed during the development of this engagement letter as the definition of scope has become clearer and as a result of validation of the data. The validation of the data is an

**c. Information Systems and Documents**

Table A-2 describes the information systems from which Wells Fargo, at Promontory’s direction, has drawn data extracts 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
Wells Fargo Home Mortgage	[REDACTED]	
Wells Fargo Financial		
Wells Fargo Home Equity		
Wachovia Mortgage San Antonio		

At Promontory’s direction, Wells Fargo provided multiple tables covering extracted data fields from these systems, which Promontory has combined into a single table for analysis. Table A-3 details the data field name and descriptions and shows data availability by portfolio.

Table A-3

**Data Dictionary and Data Availability by Portfolio**

Field Name	Field Description	WFHM	WFHE	WFF	WMSA
[REDACTED]	Attorney Firm Address, Line 1	•	NA	•	•
	Attorney Firm Address, Line 2	NA	NA	•	NA
	Attorney Firm Address - City	•	•	•	•
	Attorney Firm Address - State	•	•	•	•
	Attorney Firm Address - Zip	•	NA	•	•
	Attorney Firm Name	•	•	•	•
	Principal balance due at referral	•	•	•	NA
	Bankruptcy Flag (Y/N), ever BK	•	•	•	•
	Bankruptcy Removal Reason Code	•	NA	•	•
	Bankruptcy Removal Date (Latest Date as of 12/31/2010)	•	NA	•	•
	Bankruptcy Removal Description	•	NA	•	•

ongoing process. The current population count does not include 738 files that were discovered to be missing during validation. Collection of complete data for these missing files is still in process.

	Bankruptcy Start Date (Latest Date as of 12/31/2010)	•	•	•	•
	Bankruptcy Status (Latest Status as of 12/31/2010) A - Active C - Completed D - Deleted Blank - No BK	•	•	•	•
	Customer Complaints (Y/N)	•	NA	•	•
	Litigation Flag (Y/N)	•	•	•	•
	Date of most recent dataset	22-Aug	22-Aug	22-Aug	22-Aug
	Loan documentation at origination Full-doc Low-doc N/A (not available)	NA	NA	NA	•
	Complaint registered with the Office of the President (Y/N) -	•	NA	•	•
	Foreclosure Sale Date	•	•	•	•
	Foreclosure Completed (Sale Held) Flag (Y/N)	•	•	•	•
	Foreclosure Referral Date	•	•	•	•
	Disaster Flag (Y/N)	•	NA	•	•
	Original FICO Score	•	•	•	•
	Foreclosure State Type (Judicial or Non-Judicial)	•	•	•	•
	High cost flag (WMSA only)	NA	NA	NA	•
	The month-end date used for the mailing date fields	NA	NA	•	•
	Name of investor or owner of the mortgage	•	•	•	•
	Loss Mitigation (NowLine portfolio only)	NA	NA	•	NA
	MOD Denial Flag using latest denial date (Y/N) LM Denials After the latest FCL referral Date	•	•	•	•
	Latest Mod Denial Date after latest FCL Referral Date	•	•	•	•
	Description of Most Recent Reason for Most Recent Loan Modification Denial.	•	•	•	•
	Loans that are active in loss mitigation on the trial portion of a mod as of 12/31/2010	•	NA	•	•
	Type of Loan Modification HAMP Regular Mod (Wells program) MAP	•	NA	•	•
	Loss mitigation Type (WMSA) SS = short sale DIL = deed in lieu Blank = not available	NA	NA	•	•

	Loan Modification under Active review as of 12/31/2010 (WMSA)	NA	NA	•	•
	Completed short sale or deed in lieu as of 12/31/2010 (Y/N)	NA	NA	•	•
	Denied flag using latest denial date as of 12/31/2010	•	NA	•	•
	Denial Reason for Short Sale and Deed in Lieu WFHM - N/A	NA	NA	•	•
	Loan Number	•	NA	•	•
	Flag Current or Not Current (*WMSA Flag Current or Delinquent only on active loans)	•	NA	•	•
	Loan Type First Liens Second Liens HE Loans	•	•	•	•
	Loss Mitigation Setup Date	•	•	•	•
	Loss Mitigation Status as of 12/31/2010 A = Active C = Completed R = Removed	•	•	NA	•
	Type of most recent Loss Mitigation Reviewed (Retention or Liquidation)	•	•	•	•
	Mailing Address - Street as of 12/31/2010	•	•	•	•
	Mailing Address - City as of 12/31/2010	•	•	•	•
	Mailing Address - State as of 12/31/2010	•	•	•	•
	Mailing Address - Zip as of 12/31/2010	•	•	•	•
	Masked Loan Number	•	•	•	•
	MERS Registration (Y/N)	•	•	•	•
	MI Coverage - Un-Insured or Insured	•	•	•	•
	Multiple Rescissions per loan (Y/N)	•	NA	•	•
	Occupancy Status at most recent FCL Referral null,0,7,6 = Unknown 1,2 = Owner-occupied 4,5,9 = Vacant 3,8 = Non-Owner-Occupied (WFHM - Data available starting 7/1/2007)	•	NA	•	•
	Optional Insurance (Y/N) * WFHM excluded	NA	•	•	•
	Occupancy Status at Origination 1 = primary 2=second 3 >= investment	•	•	•	•

	Total Combined Original LTV - (Origination Loan Amt/Origination Value)	•	•	•	•
	<80%				
	80-100%				
	>100%				
	Origination date	NA	NA	NA	•
	Flag indicating if payment was made after foreclosure sale	NA	NA	NA	NA
	Payment amount made within 5 days of a foreclosure sale	•	NA	•	NA
	Flag indicating if payment was made prior to foreclosure sale	NA	NA	NA	NA
	Portfolio name	•	•	•	•
	Product Type - (Fixed/ARM)	•	NA	•	•
	Property - City	•	•	•	•
	Property - State	•	•	•	•
	Property - Zip Code	•	•	•	•
	Rescission entered Date - Latest Approval Date	•	NA	•	•
	Rescission indicator if Rescission is approved (Y/N)	•	NA	•	•
	Rescission Reason (Latest Reason to prevent duplicate reason)	•	NA	•	•
	Reverse Mortgage Flag (Y/N)	•	NA	NA	•
	Reviewed for Loss Mitigation Flag (Y/N)	•	NA	•	•
	SCRA code	•	NA	NA	NA
	SCRA Flag (Y/N)	•	•	•	•
	System of Record (SHAW, FDR, ACLS, etc.)	•	•	•	•
Source of complaints	•	•	NA	NA	
Subprime indicator (Y/N)	NA	NA	•	•	
Written complaints	•	•	•	•	

In addition to these data fields, certain screenshots from the servicing system platforms will be systematically scraped into.pdf files for review. Table A-4 details these screenshots in the order in which they will be indexed.

Table A-4

**Servicing System Screenshots**

Document Stacking Order	Document <sup>4</sup>
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<sup>4</sup> Documents identified with a "\*" represent core documents.

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Finally, we will obtain electronic images of the relevant documents from each file sampled. Table A-5 details the documents to be obtained.

Table A-5

**Additional File Documents**

Document Stacking Order	Document <sup>5</sup>
1	Note*

<sup>5</sup> Documents identified with a "\*" represent core documents.

2	Allonge, if applicable
3	Copy of recorded Mortgage-Deed of Trust-Security Instrument*
4	All recorded assignments
5	Origination appraisal*
6	Copy of BPO (during foreclosure)
7	Copy of DOD website data (SCRA)*
8	Military documents
9	Breach/acceleration/demand*
10	State required pre-foreclosure notices
11	Foreclosure title report*
12	Affidavit/Evidence of service completion
13	Evidence of required State Notification on pre-foreclosure notices
14	Entered Judgment (document)
15	Foreclosure sale results (letter from attorney office)
16	Foreclosure referral documentation*
17	First Legal filing documentation (NOD, NOS, Petition, Complaint)*
18	Copies/Affidavits of Publication
19	Affidavit/Notice of Service Completion for all loans where any foreclosure action occurred between 01/01/2009 through 12/31/2010
20	Executed Affidavit of Indebtedness/Judgment figures for all loans where any foreclosure action occurred between 01/01/2009 through 12/31/2010
21	Entered Judgment for all loans where any foreclosure action occurred between 01/01/2009 through 12/31/2010
22	Foreclosure bid instructions for all loans where any foreclosure action occurred between 01/01/2009 through 12/31/2010
23	Scheduled foreclosure sale notice for all loans where any foreclosure action occurred between 01/01/2009 through 12/31/10
24	Foreclosure sale results (letter from attorney office)
25	Recorded foreclosure deed
26	Post foreclosure sale redemption/confirmation/ratification information
27	Executed affidavit of indebtedness/judgment figures
28	Bankruptcy 341 notice
29	Bankruptcy discharge documentation
30	Bankruptcy trustee abandonment documentation
31	Bankruptcy order granting motion for relief
32	Bankruptcy order closing case
33	Bankruptcy dismissal notice
34	Bankruptcy cram down, lien strip or lien avoidance documentation
35	Bankruptcy proof of claims
36	Bankruptcy Borrower Intent
37	Bankruptcy Schedules
38	Bankruptcy Plans
39	Pacer Report
40	Short sale/deed in lieu documentation

41	Invoices to support all corporate advance transactions, including a breakdown of Attorney fees/invoices*
42	Loss mitigation letters (solicitation, follow up, approval and denials) inbound and outbound
43	Borrowers financial package (hardship letter, financial information, 4506T, tax returns, etc.)
44	Trial modification agreements
45	Permanent modification agreements
46	Modification underwriting worksheet
47	Freddie/Fannie Loan Mod transmittal worksheet
48	Loss mitigation appraisal or BPO
49	NPV data/analysis (HAMP and Servicer Loss Mit decisions)
50	Legal Disputes: documents, notes, etc.
51	Litigation, contested, adverse matter documentation/correspondence
52	Recorded substitution of trustee

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

#### **d. Data Validation**

Promontory will rely on Wells Fargo data (1) to determine the in-scope population, segment the population, and select samples from within the segments; and (2) to review sampled files, including data regarding the sampled files drawn from Wells Fargo’s systems. Accordingly, Promontory will take steps to validate that the data on which it relies is accurate and reliable, including the following:

- Interview Wells Fargo business personnel who are custodians of the data and the systems in which it resides for any known issues in the accuracy and reliability of the data;
- Identify and review relevant Wells Fargo audit reports for any known issues in the accuracy and reliability of the data;
- Conduct quality assurance tests of all files received from Wells Fargo for the purpose of population identification and segmentation; and
- Test samples of loan files to ensure that information in the files reconciles to the data in the system.

In order to identify and access the data necessary to complete the work required by the Consent Order, Wells Fargo organized a team of data owners and subject matter experts to work with Promontory in the identification of the in-scope population, the identification and access of the data items necessary to segment the population for file review, and the

identification and access of the data to be used in file review. The Consent Order Data File Vetting group (“Data Vetting Group”) commenced meeting in May 2011, and meets twice weekly by phone, supplemented by frequent e-mail exchanges. It includes representatives with responsibility for each of the four affected portfolios (Wells Fargo Home Mortgage, Wells Fargo Financial, Wachovia Mortgage San Antonio, and Wells Fargo Home Equity), as well as representatives from Promontory and Allonhill. The Data Vetting Group has created a formal process for identifying and addressing data quality issues, and fields queries from Promontory as issues arise. The Group will continue to function through this engagement as needed to ensure the availability and reliability of the data necessary to complete the tasks covered by the Consent Order.

Promontory requested Wells Fargo Internal Audit reports pertaining to potential data integrity issues in the mortgage portfolio or mortgage servicing areas. 

  
Promontory has validated both the in-scope population under the Consent Order and the data elements in the file that has been used to create segments from the in-scope population.

**Validation of in-scope population.** Specifying the in-scope population of files under the Consent Order involves identifying files from four different Wells Fargo portfolios corresponding to actions taken during the prescribed period. Because the data systems associated with those four portfolios use different data definitions and include different data elements, the Data Vetting Group devoted considerable effort to designing the dataset and implementing that design through computer code. The resulting population count has changed over time as the Data Vetting Group has continued to refine the logic and programming necessary to create the data set from Wells Fargo’s systems of record.

We validated the Promontory Consent Order population file (“the Promontory file”) by comparing it to a population count derived from the OCC Mortgage Metrics Report (“MMR”) data. The MMR data allow the OCC to count foreclosures initiated and foreclosure sales by month during the time period covered by the Consent Order. We matched the files in the two data sets and identified differences. By first identifying differences attributable to variances in data design and scope of coverage, we were able to isolate remaining differences due to errors in the logic and computer code used to build the data sets. That process enabled identification of 11,396 files that were incorrectly missing from our original data set. As of August 22 2011, we have added 10,658 of these files to our population and are continuing to collect necessary

data on the remaining 738 files.

**Validation of data elements.** Promontory conducted a series of validation steps on the Promontory data elements summarized in Table A-3 in order to confirm the completeness and reliability of the data used for the definition of scope and identification of segments for review. In particular, we tested the data for:

- *Duplicates.* Promontory and Wells Fargo identified and removed duplicates using de-duplication logic provided by Wells Fargo.
- *Missing values.* The four mortgage portfolios at Wells Fargo use different systems of record, some of which do not include values for each variable that Promontory requested. Wells Fargo provided Promontory with a spreadsheet indicating the availability of data fields by portfolio. Promontory checked each field to validate that it was missing as indicated on the spreadsheet.
- *Correct sign.* Promontory has tested the data for non-negativity where appropriate.
- *Alpha or numeric data.* The Promontory file consists of data drawn from four different sources. Combining those data into a single population data set required the Wells Fargo team to standardize the type and formatting of variables before delivering a single, large file to Promontory. The standardization process included using the same length for a given variable across all portfolios and setting all date and balance variables to numeric data type. Promontory checked that the data types and formatting were consistent with expectations.
- *Internal consistency.* Internal consistency requires that each business unit use the same definitions for each variable. Throughout the data aggregation and data cleaning process, Promontory engaged business unit data experts at Wells Fargo to ensure that variables had common definitions across portfolios. These discussions formed a significant part of bi-weekly Data Vetting Group conference calls and e-mail communication between Promontory and Wells Fargo.
- *Logical relationships among variables.* Promontory checked that expected logical relationships existed among sets of variables that describe a particular event in a borrower's file. In particular, Promontory conducted logic checks on foreclosure, bankruptcy, loss mitigation, and loan modification variables.
- *Variable Transformations.* Promontory created summary statistics and frequency counts for all variables provided by Wells Fargo. To facilitate development of a segmentation scheme, Promontory created new variables to consolidate or summarize

data consistently.

**Validation of the data used for file review.** Once files are selected for review, the data summarized in Table A-4 and A-5 will be retrieved from Wells Fargo and used to populate the File Review System. Promontory will conduct quality assurance of data received for use in file reviews will through sampling and benchmarking against data elements identified from other sources.

Where Promontory must rely on data maintained by the four business areas (WFHM, WSMA, WFF, and WFHE) or by third parties, we will use alternative methods to verify data integrity to the extent feasible. These methods may include, for example, reconciling the information contained in the business area or third party data to original source data.

Promontory will report the results of its data validation efforts through both interim reporting and final reporting at the conclusion of the review, along with any steps taken to account for any identified issues with the data relied upon.

#### **e. Data Integrity**

Snapshots of the source files used to create both the original population estimates and the independent calculations will be retained at Wells Fargo processing centers. Processing against these files is performed in a READ ONLY mode to ensure the integrity of the original data. Similarly, the extract files from the original source media, as well as the final output, will also be retained at the Wells Fargo processing centers.

### **3. 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 Order (“foreclosure exceptions” or “exceptions”), Promontory will review files in three stages:

- **Stage 1:** Segment the population for initial file review, conduct initial sample testing, analyze results;
- **Stage 2:** Resegment the remaining unreviewed population for further sampling based on Stage 1 results, conduct further testing, analyze results; and
- **Stage 3:** Further file review (sampling or 100%, to be determined in consultation with OCC) in segments failing stage 3 statistical tests.<sup>6</sup>

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<sup>6</sup> Our review will identify a *foreclosure exception* when it becomes clear through file review that Wells Fargo

We describe our sampling approach and the statistical tests we will apply in evaluating their results below.

**b. Stage 1: Initial Sampling**

**i. Segmentation**

Promontory’s proposed initial segmentation allocates the review population into segments based on common characteristics. Our proposed initial segmentation includes 65 segments: 17 based on criteria of known interest to the OCC or otherwise deemed of interest by Promontory (“judgmental segments”) and 48 more based on origination factors or other characteristics potentially affecting the complexity of the file or the manner of its servicing.

The proposed Stage 1 segmentation reflects Promontory’s efforts to date to identify groups of files that are candidates for focused file review in light of Promontory’s expert judgment and concerns expressed by representatives of the OCC in a variety of formal and informal communications. Analytical work to further refine this segmentation is ongoing. Further changes could occur in response to further information received from Wells Fargo, analysis of additional data, or additional OCC guidance.

Table A-6 lists the current proposed configuration of 17 judgmental segments and their descriptions, the proposed stage one review mode (100% file review or statistical sampling), the proposed scope of the stage 1 review, and the number of files in the segment.

Table A-6

**Judgmental Segments**

Segment	Proposed Stage 1 Review Mode	Proposed Scope of Stage 1 Review	File Count
1. SCRA related cases	100% file review	Reviewed for SCRA issues only	871

serviced a mortgage loan in a manner impermissible under state or federal law, impermissible under the terms of the note, or in a manner that was not reasonable and customary. Our review will identify a ***harmful foreclosure exception*** (also referred to as “harmful exceptions”) when file review indicates the existence of one or more foreclosure exceptions AND secondary file review establishes that the exception(s) caused the borrower financial injury.

2.	Governmental complaints (OCC or other regulatory agencies)	100% file review	Reviewed for complaints issue(s) only	7,127
3.	Bankruptcy cases in which foreclosure sale happened during an open bankruptcy, or the foreclosure referral was opened during an open bankruptcy	100% file review	Reviewed for bankruptcy issues only	1,263
4.	Bankruptcy cases in which the bankruptcy process was opened during an open foreclosure proceeding and closed before a foreclosure sale, but it is not known from the data whether the foreclosure process was suspended during the bankruptcy proceeding	Statistical sampling and analysis	Reviewed for bankruptcy issues only	43,523
5.	Handled by law firms with deficiencies or de-listed by GSEs	Statistical sampling and analysis	Reviewed under (a) through (h)	45,920
6.	Foreclosure referrals handled in Q3 2008, which displayed an 84% increase over the previous quarter	Statistical sampling and analysis	Reviewed under (a) through (h)	48,382
7.	Rescinded foreclosures	Statistical sampling and analysis	Reviewed under (a) through (h)	12,076
8.	"Contested" foreclosures	Statistical sampling and analysis	Reviewed under (a) through (h)	30,940
9.	HAMP loan modifications denied due to DTI/NPV and a foreclosure sale occurred	Statistical sampling and analysis	Reviewed under (g) and (h) only	782
10.	A foreclosure sale occurred and HAMP loan modifications denied for reasons other than DTI/NPV, or at the behest of the investor, or lack of completion of the process by the borrower. This includes files where no reason is known for the denial.	Statistical sampling and analysis	Reviewed under (g) and (h) only	4,785
11.	WF proprietary loan modifications denied due to DTI/NPV and a foreclosure sale occurred	Statistical sampling and analysis	Reviewed under (g) and (h) only	9,646
12.	A foreclosure sale occurred and WF proprietary loan modifications denied for reasons other than DTI/NPV, or at the behest of the investor, or lack of completion of the process by the borrower and a foreclosure sale occurred. This includes files where no reason is known for the denial.	Statistical sampling and analysis	Reviewed under (g) and (h) only	41,578

13.	HAMP loan modifications denied due to DTI/NPV and no foreclosure sale occurred	Statistical sampling and analysis	Reviewed under (g) and (h) only	3,239
14.	No foreclosure sale occurred and HAMP loan modifications denied for reasons other than DTI/NPV, or at the behest of the investor, or lack of completion of the process by the borrower. This includes files where no reason is known for the denial.	Statistical sampling and analysis	Reviewed under (g) and (h) only	7,135
15.	WF proprietary loan modifications denied due to DTI/ NPV and no foreclosure sale occurred	Statistical sampling and analysis	Reviewed under (g) and (h) only	11,801
16.	No foreclosure sale occurred and WF proprietary loan modifications denied for reasons other than DTI/NPV, or at the behest of the investor, or lack of completion of the process by the borrower. This includes files where no reason is known for the denial.	Statistical sampling and analysis	Reviewed under (g) and (h) only	52,510
17.	Non-regulatory complaints processed by the Office of the President	Statistical sampling and analysis	Reviewed for complaints issue(s) only	10,566

The remaining 48 segments result from application of the following waterfall of criteria:

- Whether the loan is in the WFHM, WFF, WFHE, or WMSA portfolio (4 classes);
- For files in the WFHM portfolio:
  - Whether the foreclosure was completed between January 1, 2009 and December 31, 2010, or was in process but not completed during that period (2 classes);
  - Whether the file was in loss mitigation, i.e., loss mitigation status of the file was listed as active or completed (2 classes);
  - Whether the investor type is public (Fannie, Freddie, or FHA), private, or Wells Fargo (3 classes); and
  - Whether the property is located in the top five states by foreclosure activity (California, Florida, Texas, Arizona, or Illinois), or another state (2 classes).
  - In order to reduce the size of some of the resulting geographic segments, we further segmented the other state segments based on foreclosure type (judicial

or non-judicial) and MERS registration status (yes or no).

- For files in the much smaller WFF, WMSA, and WFHE portfolios, we performed further segmentation based on foreclosure status or product type, respectively, followed by geography or region.

Table A-7 details the resulting proposed division of the WFHM portfolio into 28 segments with the population count for each segment.

Table A-7

**Proposed WFHM Segmentation**

Investor	Foreclosure Complete?	In Loss Mitigation?	Region	Foreclosure Type	MERS Registration	N	
Private	N	N	AZ/CA/FL/IL/TX			7,936	
			Other			10,593	
		Y	AZ/CA/FL/IL/TX			76,796	
			Other		N	37,800	
		Y			Y	47,284	
	Y	N	AZ/CA/FL/IL/TX			16,612	
			Other			16,397	
		Y	AZ/CA/FL/IL/TX			41,400	
			Other			37,387	
	Public	N	N	AZ/CA/FL/IL/TX			17,318
Other						30,192	
Y			AZ/CA/FL/IL/TX	Judicial			50,549
				Non-Judicial			46,793
			Other	Judicial	N	38,652	
					Y	34,683	
Non-Judicial			N	41,163			
			Y	44,352			
Y		N	AZ/CA/FL/IL/TX			20,256	
			Other			35,615	
		Y	AZ/CA/FL/IL/TX			42,465	
			Other	Judicial	N	10,158	
					Y	8,941	
			Non-Judicial	N	21,734		
Y	24,945						
Wells	N	AZ/CA/FL/IL/TX			5,722		
		Other			5,796		
	Y	AZ/CA/FL/IL/TX			2,643		
		Other			2,913		

Table A-8 details the segmentation of the WFF portfolio into four segments based on foreclosure completion and geography.

Table A-8

**Proposed WFF Segmentation**

Foreclosure Complete?	Region	N
N	AZ/CA/FL/IL/TX	5,103
	Other	8,801
Y	AZ/CA/FL/IL/TX	2,238
	Other	4,825

Table A-9 details the segmentation of the WMSA portfolio into eight segments, starting with product type, then splitting on geography.

Table A-9

**Proposed WMSA Segmentation**

Product Type	Foreclosure Complete?	Region	N
ARM	N	AZ/CA/FL/IL/TX	16,380
		Other	4,598
	Y	AZ/CA/FL/IL/TX	4,422
		Other	1,131
Option ARM	N	AZ/CA/FL/IL/TX	44,546
		Other	12,012
	Y	AZ/CA/FL/IL/TX	15,410
		Other	3,778

Table A-10 details the segmentation of the WFHE portfolio into eight segments, starting with investor type, then splitting on foreclosure completion and region.

Table A-10

**Proposed WFHE Segmentation**

Investor	Foreclosure Complete?	Region	N
Other	N	AZ/CA/FL/IL/TX	1,182

		Other	2,037
	Y	AZ/CA/FL/IL/TX	199
		Other	581
Wells	N	AZ/CA/FL/IL/TX	11,481
		Other	13,070
	Y	AZ/CA/FL/IL/TX	1,728
		Other	2,385

The proposed Stage 1 segmentation endeavors to address recent OCC guidance relating to segmentation of files featuring bankruptcy actions, loan modifications, and complaints. Efforts to address other topics of interest to the OCC will continue in stage 2 of the review.

Promontory has considered whether available data would enable it to identify a segment that would feature the risk of pyramiding of fees. We have found no feasible way to do so, and believe, accordingly, that this phenomenon, if it occurred, is best identified in the course of file review. Similarly, we have concluded that the behaviors of third parties (“other third party vendors” and “document execution service providers”) can be captured in the course of file review according to the proposed segmentation. If warranted, any of those characteristics or behaviors could serve as the basis for re-segmentation and further testing in Stage 2.

Table A-11 details Promontory’s proposed treatment of segmentation guidance provided in the May 20, 2011 joint agency foreclosure review guidance.

Table A-11

**Handling of May 20 Segmentation Suggestions**

Categories	Specific Characteristics	Proposed handling	Explanation
<b>Geography</b>	Top states where institution conducted foreclosure (FC) activity	We are segmenting the population using a number of characteristics designed to achieved granularity and complete coverage of the population. One of the splitting characteristics is whether the property is located in one of the top 5 states by WF FC activity or in the other states.	No deviation.
	Ensure sample is representative and included case files for every state in which foreclosures were conducted	Using a very granular segmentation technique that achieves the objective	No deviation. We have tested our preliminary segmentation scheme and confirmed that it achieves coverage

		Using a very granular segmentation technique that achieves the objective	No deviation. We have tested our preliminary segmentation scheme and confirmed that it achieves coverage of all of the states
<b>Third parties</b>	Identify law firms known to have significant deficiencies related to foreclosure activities, were delisted by any of the GSEs, or discontinued by the institution	Promontory identified law firms de-listed by the GSEs and law firms identified in media reports as having problems. That list was supplemented by firms that have been disqualified by Wells Fargo for inadequate performance.	No deviation.
	Large volume foreclosure firms	One of the de-listed law firms is [REDACTED] from [REDACTED], which is a high volume firm.	No deviation.
	Other-third party vendors	We will gather data in stage 1 in order to determine through statistical analysis whether this population warrants more extensive file review in subsequent stages, then proceed accordingly.	No deviation.
	Document execution service providers	We will gather data in stage 1 in order to determine through statistical analysis whether this population warrants more extensive file review in subsequent stages, then proceed accordingly.	No deviation.
<b>Behaviors</b>	Rescinded foreclosures	Rescinded foreclosures have been identified and will constitute a segment for random sampling. Depending on the results of that analysis, we may perform more extensive file review in subsequent stages. See Table A-6.	No deviation
	Modifications that were foreclosed, application pending for loan modification or loss mitigation, or loan not in default for sufficient period of time to authorize foreclosure	Identify the HAMP and proprietary loan modification denials resulting in FC sales for either DTI or NPV, and review a random sample. Review a random sample of remaining HAMP rejections and a separate random sample of denied proprietary loan modifications resulting in FC sales.	No deviation.
	Borrower had a debt cancellation contract	No separate treatment in initial segmentation because Wells Fargo did not use debt cancellation contracts.	No deviation.

	Fees assessed prior to the delinquency precipitating foreclosure	We will capture data in stage 1 sufficient to evaluate whether this population warrants more careful sampling, then proceed accordingly in subsequent stages of file review.	The initial data pull did not allow us to identify this circumstance.
<b>Claims and Complaints</b>	100% of review of claims and complaints submitted to process required by the Consent Order	See Table A-6 and discussion in Section 3	No deviation.
	Appropriate samples of claims and complaints previously submitted to the institution	Complaints previously received through the Office of the President, other than those channeled through governmental agencies comprise a judgmental segment to be randomly sampled	No deviation.
<b>“Additional Segments”</b>	100% review of Bankruptcy (BK) cases in process of foreclosure or foreclosed in 2009-2010	Identify the files in which FC sales took place with active BKs and review 100% of those files. Identify files where FC actions were commenced with an open BK, and review 100% of those files. Identify the remaining files where a FC sale took place after an open BK, and review a random sample of those files.	No deviation.
	100% of foreclosure cases referred by state or federal agencies	Review 100% of the files referred to the Office of the President by the governmental agencies.	No deviation.
	100% of SCRA cases	Review 100% of all files in the WFHM consent order portfolio that were identified by the Wells Fargo system as having been foreclosure protected under SCRA, and all of the files in the other three portfolios with an SCRA flag	No deviation. 100% of SCRA files will be subject to comprehensive and thorough review and remediation.
	Appropriate sample of HAMP cases and the institution's proprietary loss mitigation program.	Identify the HAMP rejections for either DTI or NPV, and review two random samples, with one segment for sales and one for foreclosures in process. Review two random samples of remaining HAMP rejections, one for sales and one for foreclosures in process. Identify the proprietary loan modification denials for DTI or NPV and review two random samples, one for sales and one for in process foreclosures. Review two random samples of remaining denied proprietary loan modifications, one for sales and one for in process foreclosure.	No deviation.

	Appropriate samples of cases from processing centers, units where substantial numbers of documentation errors have been found through testimony, interviews, or other means of disclosure.	Identify and review a random sample of files referred to foreclosure in the third quarter of 2008, when the number of foreclosures increased by 84% over the previous quarter.	We focused on the time period in which caseload growth appears most likely to have overwhelmed resources.
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### ii. Statistical Methodology

Interval hypothesis testing is a statistical technique appropriate to the task of estimating the rate of harmful exceptions in each of the population segments proposed for testing in Stage 1. Accordingly, in Stage 1, Promontory proposes to apply interval hypothesis testing using the following parameters:

- Confidence level = 95%
- Error rate = 3%
- Confidence interval = +/- 3%

### iii. Sample Size

From the selected testing parameters, we calculate the required sample size necessary to perform statistical testing as 124 files per segment<sup>7</sup> and the total size of the Stage 1 sample, accordingly, as the sum of (a) the product of 124 (sample size per segment) and 62 (number of segments proposed for sampling and statistical testing), and (b) the number of files in the segments in which we propose to conduct 100% review in Stage 1 – i.e., (124 x 62) + 871 (SCRA files) + 7,127 (governmental complaints) + 1,263 (bankruptcy cases) = 16,949 files<sup>8</sup>.

### iv. Statistical Analysis

<sup>7</sup> The confidence interval for the normal approximation used to construct the symmetric +/- 3% interval is inaccurate when the sample size “n” and the error rate “p” are small (i.e., if  $n \times p < 5$ ). In such circumstances, a better approximation to the asymmetric confidence interval is given by an approximation based upon Wilson’s (1927) score test; for implementation see Agresti and Coull (1998) “Approximate is Better than “Exact” for Interval Estimation of Binomial Proportions” *The American Statistician*, Vol. .52, No, 2, pp 119-126. Note that the selection of an appropriate sample size is not significantly impacted by the approximation issue, since we are not testing a hypothesis in the first stage of our review – we are only attempting to get a sufficiently large sample to facilitate analysis.

<sup>8</sup> The actual sample will be 16,985. The calculation is: 16,949 plus 45 records that were over-sampled in one non-judgmental segment in the test samples, plus 9 records to ensure that each state and territory has at least 5 records in the sample, minus 18 records that fall into more than one 100% review segment.

Upon completion of initial testing, we will use statistical techniques consistent with the parameters above (including risk scoring and CHAID decision tree analysis), together with expert judgment, to identify which analyst-recorded indicators are associated or correlated with the propensity for a foreclosure exception or harmful foreclosure exception.

**c. Stage 2: Additional Sampling in Light of Analysis**

**i. Re-Segmentation**

Our initial segmentation reflects only minimal a priori understanding of where in the review population we might find borrowers who have suffered financial injury. As we conduct our Stage 1 testing, however, and complete our statistical analysis of Stage 1 results, we expect to identify numerous such borrowers and to gain substantially greater ability to specify file characteristics associated with higher and lower probabilities of harmful exceptions. For this reason, we propose to use the statistical results of Stage 1 to prepare a new segmentation of files not sampled in Stage 1. This Stage 2 segmentation will seek to isolate foreclosures with harmful exceptions into well-defined segments. We will review our proposed re-segmentation with the OCC for its concurrence.

Upon the OCC's concurrence, we will sample files in each of the Stage 2 segments. Generally, we believe that further statistical testing is appropriate to test the hypothesis that the Stage 2 segments contain unacceptable rates of harmful exceptions. For some Stage 2 segments, however, the results of Stage 1 testing could be sufficiently clear and concerning that we will propose to proceed immediately to 100% file review.

As a general matter, we believe segments should be targeted for 100% review based on statistical analysis clearly indicating that those segments contain unacceptable rates of specific types of errors. Accordingly, when conducting census review of such segments in Stages 2 or 3 of the Foreclosure Review, we expect to focus narrowly on the types of exception(s) known to occur in those segments.

**ii. Statistical Methodology**

While the purpose of Stage 1 testing was to estimate the rate of harmful exceptions in specific population segments, the purpose of sampling and testing in Stage 2 is to test the hypothesis that Wells Fargo's foreclosure processing reliably avoided exceptions in specific population segments. Consistent with testing procedures set forth in the OCC Comptroller's Handbook on Sampling Methodologies (August 1998), achieving this purpose requires the use of a power test, rather than the interval hypothesis test used in Stage 1.

Because we are particularly concerned, in Stage 2 testing, to minimize the risk of Type II error (concluding that a given population segment is free of harmful exceptions when in fact it is not)

we will use statistical parameters intended to provide a high level of statistical power (the OCC Sampling Methodology calls this “reliability”) in testing that harmful exceptions in particular segments do not exceed a specified level of tolerance (the OCC Sampling Methodology calls this “precision”) More specifically, assuming the most efficient sample size (see below), we can frame our testing rule at this stage of the process as a binomial sampling problem: accept the null hypothesis (that the harmful exception rate is 0) if the total number of harmful exceptions found ( $X$ ) in “ $n$ ” sampled files is equal to zero; reject the null hypothesis if we find at least 1 harmful exception ( $X \geq 1$ ).

In particular, in evaluating the results of sampling in all Stage 2 segments in which we do not review 100% of the files, we will use the following statistical testing parameters:

- Reliability/Power = 95%
- Precision/Tolerance = 3%

The absence of harmful foreclosure exceptions in a given Stage 2 segment sample will tell us, with a high (95%) level of reliability, that the incidence of harmful foreclosure exceptions in the underlying population segment does not exceed the indicated level of precision (3%).

### iii. Sample Size

Based on our choice of test and the statistical parameters described above, we calculate the size of Stage 2 sample segment such that the reliability (statistical power) of the test is 95% when the precision (the alternative hypothesized value of the harmful exception rate) is 3%. Specifically, to compute the required sample size, “ $n$ ,” we search for the smallest “ $n$ ” for which this upper tail of the Binomial distribution, evaluated under the alternative, is at least equal to .95. For a Power Test with a precision rate of 3% and 95% reliability,  $n = 99$ .<sup>9</sup>

We will review 100% of the files in any Stage 2 segment the underlying population of which comprises less than 99 files.

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<sup>9</sup> The sample size was derived by solving the binomial expression in Excel for 1 minus the probability of 0 exceptions in  $n$  draws, with  $p=.03$ , varying levels of  $n$ , and selecting the level of  $n$  yielding a value of at least 95%. We confirmed this result in the statistical programming language R with the expression `1-dbinom(0,99,.03)`, which yielded the result 0.9509768. An alternative approach to Stage 2 testing might test the hypothesis that the rate of harmful exceptions is consistent with some hypothesized value (as opposed to looking for evidence to reject the hypothesis of zero harmful exceptions.) Under this alternative approach, the testing rule would be specified in terms of the realized value of the estimated binomial proportion ( $\hat{p}$ ); such an implementation is likely to require approximations to the sampling distribution for  $\hat{p}$  and could require different Stage 2 sample sizes than those described above.

**d. Stage 3: Further Review of Segments Failing Stage 2 Testing**

We will conduct further file review based on the results of Stage 2 testing. Generally, in Stage 3 we would expect to review all of the files in segments specified as likely to have significant rates of harmful exceptions on the basis of Stage 1 results and confirmed to have such exceptions by Stage 2 testing. Table A-12 below summarizes the decision rule we expect will apply in determining whether to conduct additional file review activity based on the outcome of testing in each Stage 3 segment sample.

Table A-12

**Expected Decision Rule for Stage 3 File Review  
Based on Stage 2 Sampling Results in Each Segment Sample**

Stage 2 Testing Outcome	Implication for Stage 3 Review
No harmful exceptions identified in tested segment sample	No further review of population segment
Harmful exceptions identified in tested segment sample	All files in population segment reviewed for presence of harmful exceptions identified in segment sample

In specific circumstances, analytical or logistical concerns could militate for still further testing and analysis in Stage 3 before proceeding to 100% file review. We would expect to discuss these circumstances with the OCC and Wells Fargo prior to determining the appropriate course of action.

**4. File Review Process**

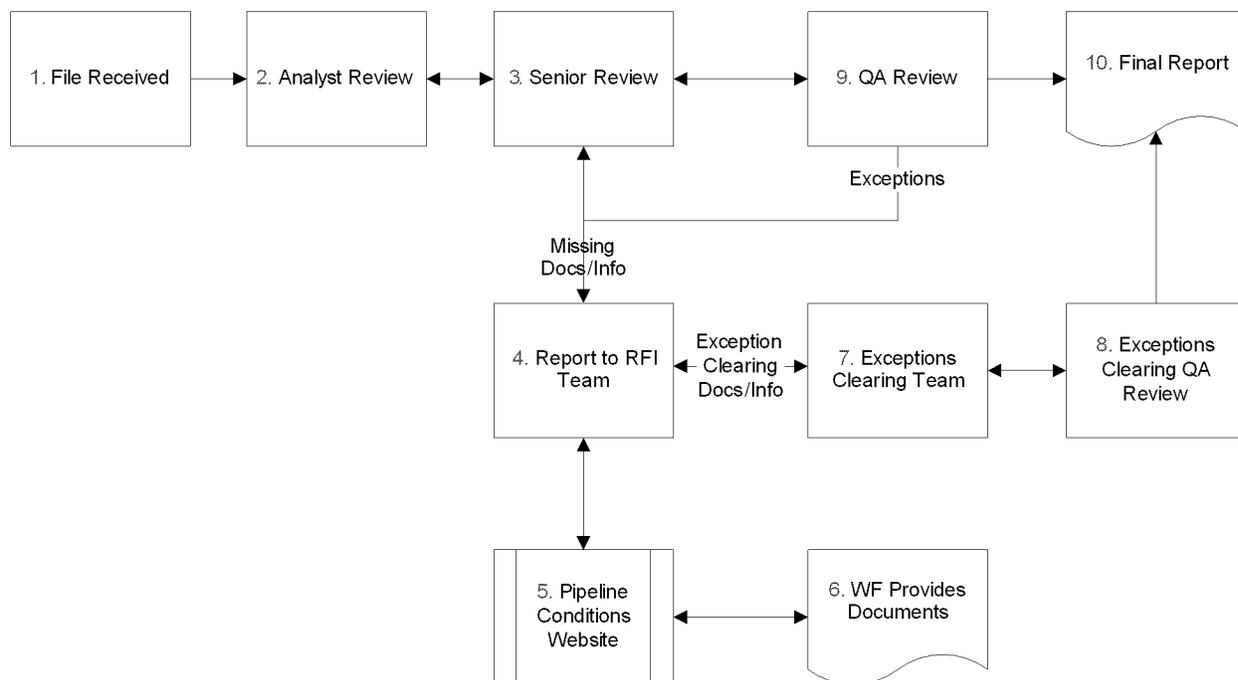
**a. Review Process Overview**

Promontory will use a multi-step review process to ensure accurate and consistent review of foreclosure files. Each step of the process will incorporate strong quality control procedures. In addition, a separate, dedicated Quality Assurance team will perform quality assurance of every step of the review. A dedicated Wells Fargo subject matter expert team will be available to assist in finding missing information or providing explanations as needed. 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 injury to the borrower.

Diagram A-13 below depicts Promontory Foreclosure Review Process.

Diagram A-13

Foreclosure Review Process



As shown, the Foreclosure Review Process consists of ten steps:

**Step 1.** In this step, Promontory will receive files from Wells Fargo. Promontory will select the files to be received according to the File Review Selection Approach described in Section 2. Promontory will inform Wells Fargo of the files to be reviewed by portfolio name and loan number.<sup>10</sup> Wells Fargo will then compile information relating to the file from its systems and records according to a set of requirements provided by Promontory, known as the “Document Stacking Order.” This Document Stacking Order defines not only the information that is required for each file, but the order in which it should be provided to facilitate expeditious review. The Document Stacking Order includes the system screen shots and documents described in Tables A-5 and A-6 above. Once Wells Fargo compiles the information for each

<sup>10</sup> Promontory has already requested 3,400 files from Wells Fargo for the purpose of (1) testing aspects of the Foreclosure Review Process; (2) generating data to inform staffing assumptions; and (3) preparing an initial set of files for review. Promontory’s File Selection Team selected the files at random from the four in-scope portfolios in such a way that they will likely be able to be included in the sample selected upon approval of the Methodology. Promontory recognizes that there could be changes requested by the OCC to its methodology that could require Promontory to select different files for the Review, in which case the benefits of compiling the initial 3,400 files will be limited to points (1) and (2) above. Promontory received approval from the OCC to begin compiling a set of sample files.

file, Wells Fargo will transmit the information using a secure document transmission protocol. Upon receipt of the files, Promontory/Allonhill will reconcile the received files against the requested files and upload the received files into the Foreclosure Review System. The Quality Assurance Team will validate this reconciliation.

**Step 2.** In this step, Analysts will perform a review of the documents provided in each file and record key information about core documents in the Foreclosure Review System. In addition, analysts will extract essential analytical loan-level data from servicer-provided documents and input this information into the [REDACTED]. If available, Promontory will leverage information extracted from Wells Fargo's systems of record to automatically populate certain fields in the Foreclosure Review System, to reduce the amount of manual entry. Where Promontory does so, it will validate the accuracy of the data extracted from the systems of record.

The [REDACTED] will direct analysts in Step 2 to collect data appropriate to the essential characteristics of the files under their review (e.g., for a file relating to a foreclosure filing in Florida, the [REDACTED] will direct the analyst to capture data essential to the analysis of compliance with applicable requirements, including Florida law). As analysts populate the [REDACTED] with required data, the system will apply encoded decision rules to reach preliminary conclusions as to the presence or absence of errors, misrepresentations or deficiencies in each file. Each time the [REDACTED] identifies such a potential exception, it will prompt the analyst to confirm or otherwise clear the exception with an explanation as system rules and permission levels permit.

During this stage of the review, the [REDACTED] will generate "unvalidated preliminary exceptions," some of which may subsequently be determined to be harmful exceptions. Where a judgmental determination is required to evaluate whether an exception resulted in financial injury to a borrower, Senior Analysts will make a preliminary determination of harm based on Promontory guidance (Step 4). All unvalidated preliminary exceptions, whether harmful or not, will then flow through the review process detailed below.

Once core documents are collected and key information input into the [REDACTED] [REDACTED] it will apply encoded test standards<sup>11</sup> to generate preliminary determinations of potential exceptions which will flow to Senior Analysts (Step 3) and Quality Assurance (Step 9) for further review.

<sup>11</sup> The encoded test standards are based on legal and other research by Promontory, Hudson Cook, LLP ("Hudson Cook"), and Allonhill. Promontory is converting these test standards into workflow diagrams, which Allonhill is using to code the [REDACTED]. As noted in Section 4.d.iii below, each workflow diagram is reviewed by the Quality Assurance Team to ensure it faithfully restates test standards.

**Step 3.** In this step, Senior Analysts execute quality control procedures by reviewing exceptions to confirm the accuracy of data entry and identify any needs for further analyst training. This step will seek to eliminate from further consideration immaterial or erroneous exceptions arising from, e.g., analyst misunderstanding, data entry errors, etc. Promontory will consider errors, misrepresentations, or deficiencies evidenced by the files and confirmed by Senior Analyst review as “unvalidated exceptions.” Where a senior analyst cannot confirm a particular answer because documents are missing, he or she will flag the file and communicate the missing document request to Wells Fargo via the Pipeline Conditions tracking website (Step 5). The Request for Information Team review will review provided documents before forwarding them to the senior analyst to complete his/her review. The Request for Information Team will consist of an average of 10 professionals – one manager, one senior analyst, and eight analysts. If the System continues to record an exception when all information is present, the file will then flow to the review and Quality Assurance processes described below (Step 9).

**Step 4.** In this step, the Request for Information Team receives, monitors and logs any requests for information arising from Steps 3, 7 and 9 that flow through the Pipeline Conditions Tracking/Reporting Website. In addition, the Request for Information Team reviews information provided by Wells Fargo in response to requests for information, ensures they are responsive, and steps files to the next level for further review in the [REDACTED] related to missing documents or to the Exceptions Clearing Team for exception responses.

**Step 5.** In this step, the Exceptions Tracking/Reporting Website receives system-generated conditions generated by Steps 3, 7 and 9 relating to missing documents, requested information, or unvalidated exceptions.

**Step 6.** In this step, Wells Fargo receives information relating to missing documents, requested information, or unvalidated exceptions and, where possible, provides the missing documents, information or exception responses. Wells Fargo will review each unvalidated exception in order, as appropriate, to supply missing information that may resolve the exception or bring flaws in Promontory’s preliminary analysis to Promontory’s attention. Wells Fargo will conduct an initial review and a senior level review including, where appropriate, Wells Fargo foreclosure counsel, to provide additional analysis prior to final disposition by Promontory.

**Step 7.** In this step, Promontory’s Exception Clearing Team reviews information provided by Wells Fargo in response to unvalidated exceptions identified by Step 4 (and subject to Quality Assurance as described in Step 9). The Exceptions Clearing Team will consist of dedicated personnel who will review files to determine whether:

- The exception can be closed;

- Additional information is needed;
- Additional exceptions resulted from the provided documents/information; or
- The exception remains valid.

The Exceptions Clearing Team will also assess whether lessons learned from the additional information may have applicability to other identified exceptions or to files that are still to be reviewed. If the Exception Clearing Team concludes that an exception contested by Wells Fargo is a valid exception, it will return the exception, with explanation, to Wells Fargo for a second review and response.

**Step 8.** Once Wells Fargo has either completed its review, or failed to respond after a pre-determined time, the file will transfer to a unit of the Quality Assurance Team responsible for reviewing the work of the Exceptions Clearing Team.

**Step 9.** In this step, Quality Assurance will provide final validation of the findings of the Senior Analysts. In general, for files with unvalidated exceptions, Promontory's Quality Assurance team will perform a second level of review to validate their accuracy, provide feedback to analysts and senior analysts, or identify opportunities or needs for process improvement. The Quality Assurance Team will inspect 100% of all unvalidated exceptions at least until it determines that preliminary exceptions identified by analysts are consistently accurate.

Additionally, Promontory's Quality Assurance Team will independently review a random sample of files preliminarily determined to show no indication of error, misrepresentation, or deficiency using both manual review and system-based methods (as more fully described below in Section 4.d). The Quality Assurance team will rely on the system-based review approach as the review process seasons and as Quality Assurance is able to validate the system design in the initial phase of the project.

In order to assure consistent quality, Quality Assurance will review the files completed by new analysts until Quality Assurance is able to determine the reliability of their file review quality.<sup>12</sup> We expect that this activity will be concentrated in the second and third months of the Foreclosure Review, when we anticipate a ramp-up of project analysts and senior analysts.

The Quality Assurance Team will increase its sampling rate or deploy targeted manual review whenever it determines that changes in the resource levels or system functionality may lead to higher error rates. Section 4.d (Quality Assurance), below, provides further detail concerning the role of the Quality Assurance Team.

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<sup>12</sup> Quality Assurance may apply an accuracy rate or sample for a certain number of days to determine the scope of sampling new analyst work.

**Step 10.** In this step, Promontory project leadership will review and validate each validated exception. If, upon consideration of Wells Fargo’s supplemental information or analysis, Promontory continues to believe that file analysis correctly indicates the occurrence of an error, misrepresentation or other deficiency within the scope of Art. VII(3)(a)-(h) of the Consent Order, Promontory will deem the exception determination validated, final, and appropriate for inclusion in Promontory’s final report.

**b. Test Standards**

Promontory will rely on test standards drawn from a variety of sources. These standards will be encoded into the [REDACTED] and available in paper and/or soft copy formats to manual reviewers at all steps in the Foreclosure Review Process.

Table A-14 summarizes the sources of the test standards that Promontory will apply in performing the Foreclosure Review:

Table A-14

**Sources of Foreclosure Review Test Standards**

Standard Type	Source
State Law	State law research performed by Hudson Cook and licensed to Promontory
Federal law	Promontory research subject to Hudson Cook validation
Mortgage terms	Promontory review of relevant loan documents
Reasonableness, customariness, excessiveness	FNMA, FHLMC, FHA and VA servicer guidelines where not otherwise established by law <sup>13</sup>

**c. Testing for Potential Errors, Misrepresentations or Other Deficiencies**

With the exception of certain segments involving denied loan modifications and bankruptcy issues indicated by the OCC, for which the file review is more limited, the Consent Order requires Promontory to make several specific determinations for each file it reviews, whether in the course of sampling or in the course of reviewing 100% of specific file populations. This section details how Promontory proposes to make those determinations.

**i. Consent Order Article 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

<sup>13</sup> Defined tolerance levels associated with one GSE standard will be applied to accommodate various investor guidelines.

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. For assistance in identifying applicable state law standards, Promontory has obtained from Hudson Cook, a reputable law firm with experience in state and federal consumer financial regulation, a description of applicable state law in each of the 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands for the period 2007 to 2010.<sup>14</sup>

Promontory will review each in-scope proceeding to identify “flags” that may indicate that a particular foreclosure action is more likely to have an exception relating to the documentation of ownership. Promontory will identify potential flags based on information external and internal to the in-scope proceeding. External sources of potential flags include:

- Interviews with Wells Fargo 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); or
  - Agency or similar status sufficient to make Wells Fargo a proper party to foreclosure proceedings.
- Review of examination and audit reports for weaknesses in the process of establishing ownership or agency or similar status sufficient to make Wells Fargo a proper party to foreclosure proceedings; 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 agency or similar status sufficient to make Wells Fargo a proper party to the proceeding.

Analysts will also seek to identify flags within the contents of each file. In particular, analysts 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

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<sup>14</sup> We have gone back to 2007 because some in-scope proceedings may have been initiated prior to 2009. If our sample includes in-scope proceedings that were initiated prior to 2007, we will determine whether there were relevant changes in the applicable state law that apply to that particular in-scope proceeding.

- Any indication that ownership of the promissory note and/or mortgage (or deed of trust) is or was inconsistent with the ownership asserted in the pleading or affidavit and the foreclosure title report.

In proceedings presenting no flags, Promontory will determine whether the pleading or affidavit on its face complies with applicable state requirements for properly documenting ownership of the promissory note and mortgage (or deed of trust).

In proceedings presenting one or more flags, Promontory will determine both (a) whether the pleading or affidavit on its face complies with applicable state requirements, and (b) whether the available documentation and other information (including the information obtained from interviews, review of examination and audit reports, and public allegations described above) together indicate that 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. Promontory will make this determination by comparing the pleading or affidavit to the foreclosure title report, the copy of the recorded mortgage, all recorded assignments, note endorsements, and (if applicable) any allonges.

Although precise components of this review will vary with the state law at issue, the review will generally consist of the following analysis:

1. Judicial foreclosures:

- a. An analyst will review the proceedings to determine if the plaintiff is the same as:
  - i. The payee of the note (or the last endorsee);
  - ii. The mortgagee (or last assignee); and
  - iii. Owner listed in the foreclosure title report.

In making this determination, the analyst will consider information contained in court pleadings, the note and any endorsements, the mortgage, and the title report conducted immediately prior to the initiation of foreclosure proceedings.

- b. Where the analyst finds that the plaintiff is not the same, the reviewer will flag the file with a condition for determination by a senior analyst whether there is an applicable exception. Such exception could include where, for example, the plaintiff is the servicer agent of the holder of the note and mortgage or where there is indication of intent to affix an endorsement to a note.

- c. The analyst will next review the pleadings to determine whether the plaintiff complied with applicable state law regarding the authentication of the note and the mortgage at the time the proceedings were initiated.
  - d. Where one or more flags are present, the analyst will determine whether the flag can be resolved. For example, where the plaintiff contests foreclosure on the ground that the plaintiff is not a proper party to the action, the analyst will review the file for evidence that readily rebuts the claim. As another example, where there is a public allegation that an affiant signed the note affidavits without undertaking a search, the senior analyst will research for evidence in the file to indicate that an actual search was conducted. A senior analyst will review the analyst's determinations and, if necessary, place an exception on the loan for subsequent review by Wells Fargo to determine if additional information needs to be provided to Promontory to clear the exception.
  - e. Where the analyst finds that the plaintiff did not properly authenticate the note and the mortgage at the time the proceedings were initiated, the analyst will review the pleadings to determine whether the plaintiff subsequently properly authenticated the note and/or mortgage.
2. Non-judicial foreclosures:
- a. The analyst will review the file to determine if the party initiating the foreclosure is:
    - i. The payee of the note (or the last endorsee); and
    - ii. One of the following:
      - 1. The mortgagee (or last assignee);
      - 2. The trustee (or subsequent trustee);
      - 3. Owner listed in the foreclosure title report; or
      - 4. Another person authorized to initiate the foreclosure.
  - b. Where the analyst finds that the conditions of 2.a are not satisfied, the reviewer will flag the file for escalation for determination by a senior analyst whether there is an applicable exception.
  - c. Where one or more flags are present, the analyst will determine whether the flag can be resolved. For example, where the borrower contests foreclosure on

the ground that the party initiating the foreclosure is not entitled to do so, the analyst will review the file to determine if there is evidence that readily rebuts the claim. A senior analyst will review the analyst's determinations and, if necessary, place an exception on the loan for subsequent review by Wells Fargo to determine if additional information needs to be provided to Promontory to clear the exception.

**ii. Consent Order Article VII(3)(b) and (d) – Determining whether Foreclosure 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 U.S. Bankruptcy Code and the Servicemember's Civil Relief Act ("SCRA"). 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 a compilation of state foreclosure laws identified and warranted by Hudson Cook 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, with respect to the latter, "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." 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:

- U.S. Bankruptcy Code; and
- SCRA.

With respect to the SCRA, Promontory understands that Wells Fargo has undertaken internal reviews of compliance. Promontory is validating those reviews to determine whether and to what extent Promontory can rely on the review to establish errors in SCRA compliance for some or all of the in-scope portfolios. This validation will consist of the following:

1. Review of the report of Wells Fargo's internal reviews and supporting workpapers;
2. Interviews of the Wells Fargo personnel who conducted the reviews; and

3. Testing the conclusions of the reviews against a sample of files to determine whether Wells Fargo:
  - a. Accurately identified borrowers who qualified for SCRA protections;
  - b. Identified errors in SCRA compliance that caused financial injury to borrowers;  
and
  - c. Remediated any such injury.

Using the Foreclosure Review System, analysts will review each in-scope proceeding against applicable state and federal standards. The System will prompt analysts to capture a range of specific information about the experience of the borrower, such as interest rate reductions, foreclosure stays, fees assessed and fees paid. The System will also prompt analysts with a number of questions depending on the state in which the foreclosure action was initiated, whether the foreclosure action was judicial or non-judicial, the time at which the foreclosure action was initiated, and other attributes.

Precise components of this review will vary with the state or federal law at issue. Generally, the review will consist of the following analysis:

1. State Law
  - a. Judicial foreclosures:
    - i. Analysts will review files to determine whether the plaintiff complied with state law requiring default in the amount of time between default and the initiation of foreclosure proceedings.
    - ii. Analysts will review files to determine whether the plaintiff complied with pre-complaint requirements including:
      - Notice of default; and
      - Notice of loss mitigation options.
    - iii. Analysts will review files to determine whether the plaintiff complied with complaint requirements including content and service requirements. In addition to verifying complaint inclusions required by state law, analysts will rely on their review of whether the note and mortgage were appropriately authenticated and properly endorsed/assigned.
    - iv. Analysts will review files to determine whether the plaintiff complied with post-

complaint requirements, such as requirements to participate in mandatory settlement proceedings.

- v. Analysts will review files to determine whether the plaintiff complied with conditions on seeking a judgment of foreclosure, including timing requirements, evidentiary requirements, and notice requirements, and violation of any applicable stay (e.g., SCRA or bankruptcy).
  - vi. Analysts will review files to determine whether the plaintiff complied with state law requirements applicable to the sale. These requirements may include notice requirements and time and place requirements, insofar as they relate to the plaintiff. Analysts will not review whether parties other than the plaintiff or the plaintiff's agents complied with such requirements. For example, where state law imposes requirements on county officers (e.g., clerks or sheriffs), analysts will not review compliance with those requirements.
  - vii. Analysts will review files to determine whether the plaintiff complied with applicable post-sale state law requirements, such as requirements to file report of sale or affidavits specifying the redemption amount and time period, where a right to redemption exists.
  - viii. Analysts will not verify, however, activities performed by court-assigned third parties or the court itself.
- b. Non-judicial foreclosures:
- i. Analysts will review files to determine whether the party initiating a foreclosure complied with applicable notice of default requirements, including requirements to contact the borrower via telephone and mail and requirements to publicize notice of default and intention to foreclose as required by state law (e.g., publication in a local paper).
  - ii. Analysts will review files to determine whether the party initiating the foreclosure complied with applicable notice of sale requirements, including timing and publication requirements.
  - iii. Analysts will review files to determine whether the party initiating the foreclosure complied with applicable post-sale requirements, including report of sale requirements and obligations on the party initiating the foreclosure arising from any applicable redemption rights.

2. Federal Law

- a. U.S. bankruptcy laws. Analysts will review files to determine whether, where the borrower filed for bankruptcy, Wells Fargo complied with the stay of foreclosure proceedings pending a successful petition for relief from the stay.
- b. SCRA. To the extent that Promontory cannot rely on the internal review of SCRA compliance conducted by Wells Fargo, analysts will review files to determine whether Wells Fargo complied with:
  - i. provisions applicable to the interest rate that can be charged borrowers on active military service for obligations entered into prior to the date of their active military service (50 USC 527); and
  - ii. stays of foreclosure proceedings against borrowers who defaulted on obligations entered into prior to the date of their active military service during the borrower's active military service or for 9 months following the termination of the borrower's active military service (50 USC 533).

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

Article VII(3)(c) of the Consent 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;<sup>15</sup> when the loan was performing in accordance with a trial or permanent modification;<sup>16</sup> 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) an automated query of data extracted from Wells Fargo's systems; and (2) analyst review of the contents of each in-scope proceeding. As noted above, [REDACTED] will incorporate test standards related to state law requirements on loan modification or other forms of Loss Mitigation contained in the Hudson Cook Foreclosure Survey as well as relevant Federal law requirements on the same topic. In addition the System will incorporate data extracted from Wells Fargo servicing systems covering loan performance, modification or mitigation status, and other relevant data. Finally, the System will also incorporate relevant terms from mortgage loan documents and

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<sup>15</sup> The question of what constitutes "under consideration" is currently before the OCC as part of the agency's pending guidance on financial injury. Promontory will adhere to any definition promulgated by the agency in final guidance. In the event that the final guidance does not provide adequately clear definition, Promontory will escalate the matter through Wells Fargo's OCC examination team.

<sup>16</sup> Promontory will consider a loan to be "performing in accordance with a trial or permanent modification" where: (1) Wells Fargo receives full payments in accordance with the trial or modification payment terms on or before the scheduled due date for each payment; and (2) the borrower is current on trial or modification payments.

related agreements.

Analysts will record any exceptions in the [REDACTED] for review by a Senior Analyst and Quality Assurance. Where an analyst cannot answer a particular question because documents are missing or insufficient, the analyst will flag the file and communicate the missing document request to Wells Fargo via the missing document and exceptions tracking website. As discussed above, a similar process will be followed where the Request for Information Team reviews provided documents before forwarding them to the analyst to complete his/her review.

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

Article VII(3)(e) of the Order requires the independent consultant to determine whether any fees or penalties assessed were permissible, reasonable, and customary.

Promontory will make these determinations by testing files against defined exceptions, deeming an exception to have occurred when the file indicates that Wells Fargo charged one or more fees or penalties that failed one or more test conditions. Because Promontory will test each loan file against all conditions, a single file could include multiple exceptions.

**1. Permissibility**

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

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.

## **2. Customariness**

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), the U.S. Department of Veterans Affairs (VA) and the Rural Development Agency (RDA) of the U.S. Department of Agriculture for their respective insured and investor-owned loans. Promontory will deem not customary any fee or penalty in excess of such guidance and not otherwise approved by the GSEs or government insurer or investor as evidenced by a review of borrower account records.

For loans other than GSE, FHA, VA and USDA loans, Promontory will deem not customary any fee or penalty exceeding Fannie Mae guidance by more than 10% in amount.

## **3. Reasonableness**

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

- Relates to a service that was not in fact performed;
- Is associated with the processing of a borrower request for a loan modification, but not for those charges involving a recorded agreement for extension of term or reamortization as allowed under 24 CFR 203.552(a)(7) for loans insured by the FHA;
- Was assessed to protect the interests of a secured party when the borrower had accepted and was in good standing under a trial loan modification or Trial Period Plan (

“TPP”);

- Was assessed for late payment when the borrower had made timely payment in an amount consistent with the terms of an accepted trial loan modification;
- Was assessed to protect the interests of a secured party while the borrower was in good standing under a permanent loan modification;
- Was assessed for forced placement of insurance when insurance was already in force; or
- Was assessed for forced placement of insurance in an amount exceeding the higher of the loan balance, property value or cancelled policy coverage level.

**v. Consent Order Article 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 Wells Fargo 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
- Uncustomary.

Specifically, the [REDACTED] will prompt Analysts for detail concerning the types of fees and penalties assessed and the frequency of their assessment. The System will then apply encoded test standards to reach a preliminary determination. Preliminary determinations of potential exceptions will flow to Senior Analysts and Quality Assurance for further review.

**vi. Consent Order Article 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 HAMP, and consistent with the policies and procedures applicable to Wells Fargo'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 reviews of the appropriateness of loss mitigation activities will seek to determine whether borrowers were afforded appropriate opportunities to be considered for loan modifications, and whether decisions reached by Wells Fargo in regard to such opportunities met with HAMP and proprietary program criteria, subject to investor requirements. The review population will include customers approved and customers denied for modifications.

Promontory will review loan modifications based on information available at the time of the decision using then-applicable program guidelines. For all denied loan mod judgmental segments (see table A-6), in reviewing the modification decisions, Promontory will examine documented income as well as customer-specific inputs to the NPV model and any tools used to determine modification terms. If the information considered is accurate to within a 5% margin of error, Promontory will accept the decision without re-running the NPV model or tools. If not, Promontory will re-perform all calculations and evaluate the file for potential financial injury.

For the non-judgmental review segments and all other judgmental segments for which VII(3)(g) is in scope, in reviewing the modification decisions, Promontory will perform recalculations as warranted. For approved modifications, we will consider the payment amount to be accurate if the recalculation results in a payment that is no more than 10% less than the existing modification payment (per HAMP rules). Promontory will not validate HAMP NPV models. For proprietary modifications, Promontory will review the validation or review work performed by Wells to determine the level of independence and whether further work is necessary to accept model and assumption integrity and the validity of other tools used.

Attachment B provides additional detail on the manner in which the Complaint Process will review loan modification decisions.

**vii. Consent Order Article VII(3)(h) – Determining whether Errors, Misrepresentations or Other Deficiencies Resulted in Financial Injury to the Borrower or the Mortgagee**

Article VII(3)(h) of the Consent Order requires a determination of whether the borrower has suffered financial injury. The joint agency foreclosure review guidance defines financial injury to the borrower or the mortgagee as monetary harm directly caused by errors,

misrepresentations or other deficiencies identified in the Foreclosure Review. The guidance clarifies that 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.

In evaluating financial injury to borrowers, Promontory will adhere to relevant OCC guidance, as issued on August 29, 2011, and as that guidance may from time to time be modified by the agency.

Under terms of the Consent Order, remediation of financial injury is the responsibility of Wells Fargo. Notwithstanding, the OCC has asked the independent consultants, including Promontory, to consider how remediation should occur when financial injuries are identified in the course of the Foreclosure Review.

## **5. File Review Quality Assurance**

### **a. Quality Assurance Overview**

As further detailed in this section, Promontory's Quality Assurance team will perform quality reviews of key work products of the File Review Process, including:

- Reviews of analysis during system and process trial runs, in order to provide early feedback on the quality of system design and review process. In the trial period, analysts and senior analysts, with the assistance of Quality Assurance, will test an initial batch of files against each set of system review criteria.
- Following formal commencement of the File review:
  - 200 files or a statistically valid sample of the files processed by in the first three days of the Review, whichever is a greater number. Based on the lessons learned from the trial runs, the Quality Assurance Manager will determine the sampling selection method for selecting these first week files.
  - 100% of preliminary exception files following analyst review at least until preliminary exceptions are consistently correct, and thereafter an ongoing random sample of Level 1 files with unvalidated preliminary exceptions<sup>17</sup>;

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<sup>17</sup> Our staffing model assumes a ramp-up of new Level 1 analysts in the second and third months of the review, and thereafter a steady state. As a relatively large group of analysts joins the project in those two months, Quality Assurance will review their completed files until Quality Assurance gains confidence that the new analysts are producing consistent quality work. Quality Assurance is considering applying an accuracy rate threshold, sampling for a certain number of days, or using some combination method to determine the scope of sampling.

- An ongoing, random sample of files in numbers at least large enough to be statistically valid that are preliminarily found by analyst review to evidence no exceptions; and
- Final validation of exceptions forwarded by the Exception Clearing Team as described in Section 4 (please see descriptions of Steps 7 and 8).
- Key inputs into the Foreclosure Review System.

#### **b. Quality Assurance of File Review**

Quality Assurance file review will seek to provide:

- (1) Objective assurance of the quality of work performed by analysts and senior analysts, particularly with respect to Type II errors or false negatives; and
- (2) Feedback on the performance of individual review personnel and identification of additional training opportunities based on Quality Assurance results.

#### **i. Quality Assurance File Review Sampling and review methodology**

Promontory will base its Quality Assurance sampling methodology on sampling guidance published by the OCC, using tolerances and reliability thresholds established by the primary sampling method; as circumstances warrant and on a case by case basis, the Quality Assurance function may use sampling rates that will exceed the OCC guidance on minimum samples. (See Section 2, above.)

Assignment to Quality Assurance Segments based on Level 1 results. Following completed Level 1 review, the Quality Assurance Team will assign each reviewed file to one of three segments (“Quality Assurance Segments”):

- *Unvalidated preliminary exception segment.* The Quality Assurance Team will review 100% of files in this category until the Quality Assurance Team determines that preliminary exceptions identified by analysts and senior analysts are reliably correct.
- *High risk no preliminary exception segment.* The Quality Assurance team will separate files determined by senior analyst review to be exception free into high risk and low risk segments.<sup>18</sup> The high risk segment will include files reviewed by senior analysts with

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<sup>18</sup> The Foreclosure Review System assigns scores to analysts based on the number and types of errors corrected by Senior Analysts. We propose to use the scoring system to inform the Quality Assurance sample.

high past error rates. The Quality Assurance Team will review 15% of files in this segment. If the Quality Assurance Team finds Type II errors or false negatives in this category, it will supplement its review with judgmental sampling of other files reviewed by the same senior analyst or with similar file characteristics. The Quality Assurance team will independently recommend re-performance of file reviews by the foreclosure analyst team where it determines the work quality of an individual senior analyst does not support high confidence in the absence of Type II errors.

- *Low risk no preliminary exception segment.* The low risk segment will include files reviewed by experienced senior analysts with low past error rates. The Quality Assurance team initially will review 10% of files in this segment and later adjust as appropriate based on our actual experience. If the Quality Assurance Team finds Type II errors or false negatives in this category, it will supplement its review with judgmental sampling of other files reviewed by the same senior analyst or with similar file characteristics.

Assignment to Quality Assurance Segments based on Level 3 Exception Clearing results.

Following completed Exception Clearing review, the Quality Assurance Team will validate all final exceptions forwarded by the Exception Clearing Team to assure consistency in the interpretation and application of definitions of exceptions.<sup>19</sup>

Sampling rate adjustments. In order to reduce likely errors in the early days of the Review, the Quality Assurance team will use a combination of system and manual review methods to: (1) perform reviews of partial file analysis activity and results during system and process trials during which analysis activity may take place, but cannot yet be completed for any single file; and (2) inspect at least 200 files in the first week immediately following formal commencement of the Review.

Likewise, the Quality Assurance team will adjust its sampling rate for the “low risk no preliminary exception segment” as appropriate based on our experience with the review. The Quality Assurance team will maintain its sampling rate for the “high risk no preliminary exception segment” to 15% throughout the Review period.

The Quality Assurance Team will increase its sampling rate or deploy targeted manual review whenever it determines that changes in the resource levels or system functionality may lead to higher error rates.

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<sup>19</sup> The Exception Clearing Team will forward all exceptions to the final QA exception review team, except in cases where Wells Fargo agrees that an exception had occurred. Quality Assurance believes that the risk of using inconsistent exception definitions or the risk of making erroneous decisions at the Exception Clearing Team level would be low in those cases and therefore plans not to review them.

## ii. Quality Assurance File Review Reporting

The Quality Assurance Leads will review and report key weekly Quality Assurance metrics on files for which analyst and senior analyst review is completed during the Foreclosure Review. Weekly reports will contain:

- Total number and type of files reviewed by the Quality Assurance Team during the reporting period and to date;
- Total number of files with exceptions validated by the Quality Assurance Team during the reporting period and to date;
- Description of exceptions validated by Quality Assurance Team;
- Number and types of exceptions found by Quality Assurance in files determined by Level 1 review to be exception free;
- Quality Assurance metrics by analyst. The Quality Assurance metrics will represent the quality of review conducted by individual analysts and derive from the number and types of corrections made on their respective files during the Quality Assurance process;
- Common errors or issues requiring team-wide communication;
- Recommendations for System changes based on Quality Assurance results; and
- Recommendations for additional analyst training and for re-performance of file reviews based on Quality Assurance results.

In addition, the Quality Assurance Team will provide feedback to individual analysts on an ongoing basis and will maintain Quality Assurance documentation regarding Quality Assurance history and results in the Foreclosure Review System.

### c. Key Data Input Quality Assurance

Quality Assurance will review the business rules and other key system inputs prior to system programming. Business rules translate applicable legal or regulatory standards into decision-logic inputs that are compatible with the coding requirements of the Foreclosure Review System.

For example, Promontory will review state legal workflow diagrams and business rules, both of which are critical inputs to the Foreclosure Review System. The Quality Assurance unit of the Promontory team will conduct secondary reviews of all diagrams and business rules to ensure that they match the legal standards as researched and summarized by the external law firm

retained by Promontory. Similarly, Quality Assurance will validate the business rules for fee standards (impermissible, reasonable, customary, or excessive fees), SCRA, RESPA, TILA, and other key standards as appropriate.

Quality Assurance will rely on its team of subject matter experts to execute this task.

## **6. Preparation and Submission of Report**

Consistent with the requirements of Article VII(4) of the Consent Order, Promontory will provide Wells Fargo and the OCC with a final report (the "Foreclosure Report") covering both the File Review and Complaint Processes. 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 harmed and the nature and amount of the harm incurred to the extent of Promontory's ability to determine that amount based on the information available to Promontory.

**Attachment B – Draft of August 31, 2011  
Complaint Process and Methodology**

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5. Preparation and Submission of Report

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## **1. Overview**

The objective of the Foreclosure Review is to identify borrowers who have suffered financial injury through errors or other deficiencies in the foreclosure process, in order that their injury can be remediated. Attachment A describes a methodology for pursuing this objective through sampling and review of borrower loan files. This Attachment describes a supplemental methodology (the “Complaint Process”) for pursuing the same objective, by establishing an outreach process and reviewing complaints from borrowers within the scope of the Foreclosure Review. In combination, Promontory believes these approaches represent a sound and credible way to achieve the purposes of the Foreclosure Review.

This attachment details how Promontory currently envisions execution of the Complaint Process. Although the current plans represent the product of many weeks of planning and analysis, they are continuing to evolve in light of new regulatory direction and coordination efforts among the similarly situated mortgage servicers and their independent consultants. Promontory will continue to consult closely with the OCC and Wells Fargo in regard to material changes to the methodology described here.

## **2. Prompting and Reviewing Customer Complaints**

### **a. Introduction**

Close review of borrower complaints is essential to accomplishing the goals of the Foreclosure Review. Accordingly, as Attachment A details, the File Review Process entails careful analysis of files associated with complaints during the review period, including both random sampling and analysis of complaints submitted to Wells Fargo directly by members of the in-scope population during the review period and census review of such complaints referred to Wells Fargo by governmental agencies.

The Complaint Process seeks to enhance the effectiveness and credibility of the File Review Process by supplementing statistical and judgmental sampling with a process that allows borrowers who believe they have been harmed to identify themselves.

Making the Complaint Process successful, however, involves difficult process engineering choices and requires, especially, a carefully balanced approach to promoting the complaint opportunity to in-scope borrowers. The success of the Complaint Process is at risk both to insufficient or ineffective efforts to promote the complaint opportunity and to promotional efforts that would have the effect of overwhelming the Complaint Process with high volumes of out-of-scope, frivolous, or fraudulent complaints.

## **b. Overview**

As further described below, Wells Fargo, in coordination with similarly-situated mortgage servicers, will conduct outreach to in-scope borrowers through a combination of direct mail and advertising; receive complaints; review and evaluate those complaints; and propose complaint resolutions to Promontory. Promontory will independently review and either affirm or reject each proposed resolution in light of relevant file documentation. Upon Promontory's independent decision, Wells Fargo will administer any necessary remediation or other follow-up activity. Wells Fargo will provide both Promontory and the OCC with comprehensive reporting on its administration of this complaint process, sufficient to support Promontory's efforts to validate that Wells Fargo is properly executing every element of the process.

In consultation with the OCC, Promontory will review and approve Wells Fargo's outreach plan and process design; validate Wells Fargo's list of in-scope borrowers for reliability; validate Wells Fargo's outreach and complaint intake processes; review and approve program elements relating to borrower follow up; validate in-take processing of complaints received in the Foreclosure Complaint Process; independently review Wells Fargo's proposed resolutions and accept or reject them; and perform thorough quality assurance testing and other process oversight. Promontory and Wells Fargo currently anticipate that Wells Fargo will propose and Promontory will approve an outreach plan, process design, and intake process in coordination with other similarly situated mortgage servicers, broadly consistent with the approach jointly presented to the OCC by Wells Fargo, J.P. Morgan Chase, Bank of America, and Citibank on August 2, 2011. Efforts to refine that approach in consultation with the OCC and other servicers are currently ongoing.

## **c. Scope**

The Foreclosure Complaint Process will provide independent review and decisioning of all complaints by in-scope borrowers who:

- Submit complaints through the outreach and intake processes described below within the prescribed timeframe; or
- Submit relevant complaints through other Wells Fargo channels or indirectly (e.g., through state Attorneys General, federal regulatory agencies, etc.) during the period from January 1, 2011 through the end of the Foreclosure Review.

The scope of the Complaint Process will not extend to complaints that do not relate to the subject matter of the Foreclosure Review, that relate to alleged actions or omissions outside the time period of the Foreclosure Review, or that relate to borrowers who are not members of the review population.

#### **d. Opportunities to Coordinate**

Promontory has convened several meetings of the independent consultants in an effort to explore opportunities to coordinate elements of the Foreclosure Complaint Process. These discussions have centered on potential coordination of outreach activities, including both direct mail communications and advertising, and to a lesser extent on opportunities to coordinate on the intake of borrower complaints. Absent a coordinated effort, compliance with the Consent Order will require numerous servicers to run very different advertisements for essentially the same purpose simultaneously in every major media market in the United States.

Coordination is, however, difficult to achieve in practice. The various servicers and their independent consultants have divergent perspectives and differing sensitivities. In addition, the prospect of coordination raises significant conceptual, operational, legal, and financial challenges, all of which must be worked through to the satisfaction of a large group of servicers and consulting firms.

On August 2, 2011, Promontory and Wells Fargo, together with representatives of PwC, Deloitte, Bank of America, J.P. Morgan Chase, and Citibank presented the OCC with a proposed coordinated approach to borrower outreach and customer intake. The OCC has expressed general support for the proposed approach, subject to refinement of details and resolution of certain open items, and encouraged other servicers to support it as well. Promontory and Wells Fargo are continuing to work with the other large servicers and their independent consultants, and with other servicers and independent consultants wishing to participate, to finalize the approach.

While there can be no assurance that servicer and independent consultant efforts to coordinate will succeed, Promontory and Wells Fargo believe that the four largest servicers and at least some of the smaller servicers will pursue a coordinated approach under the oversight of their independent consultants. The descriptions of this approach provided below are subject to ongoing refinement through the course of the coordination effort and in consultation with the OCC.

#### **e. Borrower Communication Plan**

##### **i. Status**

At Promontory's request, and in consultation with other major servicers and their independent consultants, Wells Fargo has been working to develop an outreach plan intended to reach as many members of the in-scope population as practicable, both to let them know about the Foreclosure Complaint Process, and to encourage them to submit any complaints they may have about financial injury they believe were caused by errors in Wells Fargo's foreclosure

process. Wells Fargo has made substantial progress in developing its plan, and Promontory and Wells Fargo have had numerous exchanges regarding its contents. Nevertheless, the plan remains the subject of ongoing discussions among the major servicers and their independent consultants. Promontory expects to provide its final review and approval only in consultation with the OCC. Sample borrower communications appended to this attachment likewise continue to undergo refinement.

## **ii. Direct mail outreach**

Consistent with outreach strategies that have proven successful in the class action context, Promontory and Wells Fargo expect the borrower communication effort to rely primarily on first class mail. Wells Fargo believes it is feasible to launch a coordinated mail outreach effort approximately 45 days after approval from the OCC of common solicitation letters, in-take forms and advertising copy. In consultation with other servicers, Wells Fargo is studying opportunities to launch sooner, in accordance with the expressed preference of the OCC.

The direct mail communication will explain the purpose of the communication (to provide an opportunity for independent complaint review); set forth eligibility criteria, minimum information requirements, and the timeframe for responding; describe the nature of the independent review process; and explain how the Complaint Process will work, setting expectations for the timeframe in which the borrower should expect a response.

Outreach by first class mail has significant advantages over alternative forms of outreach. First, mail outreach can be highly effective in reaching the target population. Wells Fargo expects to be able to obtain valid, current mailing addresses for well over ninety percent of in-scope borrowers using a combination of industry databases, skip tracing, and current address information associated with other Wells Fargo accounts. No other outreach strategy promises comparable penetration of the in-scope population. Second, equally important to the success of the complaint process, by focusing specifically on borrowers known to be in scope, mail outreach mitigates the risk that complaints received from borrowers outside the scope of the Foreclosure Review could overwhelm the Complaint Process.

Promontory and Wells Fargo are concerned about the potential for direct mail outreach to generate unmanageably large response volumes if borrowers “try their luck” in the process irrespective of actual financial harm. In consultation with the other independent consultants and servicers, we are working to craft an implementation approach to mitigate this risk. An important component of this strategy will be a pilot mailing intended to test response processes and refine our response estimates prior to launching on a broader scale. We will consult with and obtain the OCC’s approval of any such approach prior to adopting it. Depending on the response estimates resultant from the pilot, staggered mail drops and

associated advertising may also prove integral parts of this strategy.

### **iii. Advertising**

Along with the other major servicers and their independent consultants, Promontory and Wells Fargo have had extensive discussions concerning the type of advertising to be conducted in support of the Complaint Process. We share the concern that an advertising campaign addressed to the general population could attract large volumes of out of scope, irrelevant, frivolous, and insubstantial complaints, and that these volumes could jeopardize our ability to review and appropriately resolve the legitimate complaints of borrowers in need of remediation for genuine financial injuries. For this reason, we expect Wells Fargo's approved, coordinated outreach plan to feature an advertising campaign focused primarily on heightening awareness of the Complaint Process among in-scope borrowers and secondarily on bringing the process to the attention of in-scope borrowers who, for whatever reason, may fail to receive or attend to the direct mail notification.

More specifically, the advertising campaign in support of the Complaint Process will seek to (a) educate in-scope borrowers about the existence of the special complaints process; (b) encourage them to open the mail they will receive as part of the direct mail outreach effort; and (c) encourage them to respond if they meet the eligibility criteria. In addition, for the benefit of borrowers who did not receive or attend to the direct mail notification, advertising will provide both an 800 number and website for the benefit of those in need of more information. Authenticated in-scope customers may submit a complaint form via the website or may request that a form be mailed to them for submission.

Promontory anticipates that, as part of the coordinated borrower outreach strategy, the servicers will negotiate and agree upon a proposed joint media buy. Promontory will review the joint proposal to confirm that it appropriately addresses Wells Fargo's in-scope population. Preliminary analysis indicates that only slightly more than half of Wells Fargo's in-scope population resides in one of the twenty largest U.S. MSAs. The remainder of the population resides in smaller MSAs (35%) or outside of MSAs altogether (11%). These circumstances strongly suggest an advertising strategy concentrated on national newspapers and publications, but there may be a need for supplemental local general market advertising in the MSAs with the largest in-scope concentrations and in publications serving large African-American communities and Hispanic communities.

### **f. Complaint Intake and Disposition**

We envision making every effort to encourage in scope borrowers to submit complaints to the Complaint Review Process on standard forms. Use of standard complaint forms will help to

ensure consistent data capture, assist in minimizing out-of-scope complaints, and facilitate complaint processing. Wells Fargo will include these forms in every direct mail piece associated with the Complaint Review Process, allow for submission of forms over the internet, and provide them upon request to those in-scope borrowers phoning the 800 number established for the Complaint Review Process.

**i. Intake Channels**

Incoming mail complaints will arrive via a lockbox maintained by a third party administrator retained by Wells Fargo, currently anticipated to be Rust Consulting, Inc. We envision providing process information and forms via both an 800 number and the internet and expect to be able accept complaints through the internet.

Following receipt, Wells Fargo's administrator will categorize each incoming complaint as either out-of-scope, in-scope, or incomplete.

**ii. Out-of-Scope Complaints**

Wells Fargo's administrator will deem complaints out of scope and exclude them from the Complaint Review Process if they do not relate to the subject matter of the Foreclosure Review or are outside the time period of the Review. Wells Fargo will divert complaints deemed out of scope to its normal customer service channels.

Promontory will establish the standards for excluding any received complaints and will review and validate the administrator's exclusions from the Complaint Review Process.

**iii. Incomplete Complaints**

Wells Fargo's administrator will deem complaints incomplete if they are in scope, but fail to provide essential information required by the standard complaint intake form. These complainants will receive a letter asking them to provide additional information. Wells Fargo will instruct its administrator to issue such letters within seven (7) days of receipt of each incomplete complaint or, alternatively, within a time period jointly agreed upon by the coordinated servicers and their independent consultants.

Borrowers who do not respond within thirty (30) days thereafter, or within an alternative time period jointly agreed upon by the coordinated servicers and their independent consultants, will be considered to have dropped their complaints.

Promontory will establish the standards of a complete complaint and will review and validate the incomplete determinations of Wells Fargo's administrator as well as all decisions to close complaints on the basis of borrower failure to respond to requests for additional information.

#### iv. In-scope Complaints

Wells Fargo's administrator will image each incoming complaint and any supporting documentation provided by a borrower and upload the electronic image into its case management system. Within seven (7) days of initial receipt, either Wells Fargo or its administrator will send an acknowledgment letter to the complainant.

Promontory review of each in scope complaint will occur in two stages and focus narrowly on the complaint specified by the borrower, except that, in cases where the borrower submits a complete, generalized complaint, Promontory will conduct a review for all provisions of Article VII of the Order to be reviewed as part of the File Review Process. Promontory will establish the standards for generalized complaints to be identified by Wells Fargo's administrator in the in-take process.

First, Wells Fargo will review the complaint, initially to determine whether the complaint was previously submitted and resolved.

- If the borrower has previously made the same complaint and Wells Fargo determines it was previously resolved, Wells Fargo will transmit the original complaint and supporting resolution documentation to Promontory for Promontory's independent review and validation;
- If the borrower has not made the same complaint previously, or has made the same complaint previously and the complaint remains unresolved, Wells Fargo will process the complaint, prepare a recommended disposition, and provide the complaint, the recommendation, and supporting documentation to Promontory for independent review and decisioning.

Following Wells Fargo's review, Promontory will review each file to evaluate Wells Fargo's analysis of it and its proposed disposition. If Promontory's review requires additional information, Promontory will request such information from Wells Fargo.

With regard to section (3)(g) of Article VII, the Wells Fargo staffed complaint review function will evaluate the appropriateness of previously completed loss mitigation activities to determine whether borrowers were afforded adequate opportunities to be considered for loan modifications, and whether the decision at the time met with investor, HAMP, and proprietary program criteria. Wells will review loan modifications based on information available at the time of the decision using then-applicable program guidelines. Promontory will review the recommended disposition reached by Wells Fargo using then applicable program guidelines, make a final decision and evaluate the file for potential financial injury.

There are four logical outcomes to a completed initial complaint review:

- If Promontory agrees with the borrower's complaint and Wells Fargo resolution, Promontory will log the complaint and its resolution for inclusion in its Foreclosure Review Report;
- If Promontory disagrees with the borrower's complaint and concurs with Wells Fargo resolution, Promontory will log the complaint and its resolution for inclusion in the Foreclosure Review Report;
- If Promontory agrees with the borrower's complaint but not with Wells Fargo's proposed resolution, Promontory will request re-review by Wells Fargo; or
- If Promontory disagrees with the borrower's complaint and also disagrees with Wells Fargo's resolution (e.g., file review indicates WF responded inappropriately because borrower was unclear or mistaken in describing the issue), Promontory will request re-review by Wells Fargo.

If Wells Fargo revises its resolution on reconsideration, it will pass the complaint, the final resolution, and the supporting documentation to Promontory and, if Promontory agrees, Promontory will log the resolution for inclusion in the Foreclosure Review Report. If a disagreement remains, Promontory will make the final determination and log the complaint and borrower injury for inclusion in the Foreclosure Review Report.

Annex B-1 and Annex B-2 (attached hereto) depict in diagrammatic form the contemplated end-to-end process flow of the Foreclosure Complaint Process and the process flow for post January 1, 2011 complaints received through other channels.

#### **v. Return Mail**

Wells Fargo's administrator will conduct skip tracing or take other steps as necessary to identify a current address, phone number, or email for any former borrower whose mail is returned and will take additional steps by mail, telephone, or email to alert them to the Foreclosure Complaint Process.

#### **g. Reporting**

Wells Fargo and Promontory are working to develop robust controls to ensure that each complaint is appropriately logged and tracked from the moment of receipt through final disposition and follow up.

Throughout the Foreclosure Complaint Process,

- Promontory will track and periodically report to the OCC regarding:
  - Complaints received through the borrower outreach process;
  - Exclusions of complaints from the Foreclosure Complaint Process and reasons for exclusion;
  - Complaint resolution; and
  - Other data as requested by the OCC.
  
- Wells Fargo will publish weekly reports covering:
  - Total complaints received;
  - Number of in-scope complaints;
  - Type of in-scope complaints received;
  - Number of complaints acknowledged;
  - Number of in-scope complaints in review process;
  - Number of in-scope complaints pending Promontory review;
  - Number of in-scope complaints responded to;
  - Disposition of in-scope complaints responded to;
  - Number of in-scope complaints requiring remediation;
  - Number of in-scope complaints remediated; and
  - Number of follow-up requests of in-scope complaints.

**h. Timeline**

The Foreclosure Complaint Process will adhere to the following timeline:

- Within 15 days of OCC approval:
  - Special complaint function launches for review of in-scope complaints received since January 1, 2011 through Wells Fargo's normal channels;
  
- Within 45 days of OCC approval or such earlier date as may prove operationally feasible:

- Pilot promotion of solicited Foreclosure Complaint Process begins;
- Approximately 30 days following pilot launch:
  - National coordinated borrower outreach launches;
- 120 days following the last mail drop of the national coordinated borrower outreach:
  - Special complaint function intake ceases (further incoming complaints diverted to routine channels); and
- 180 days following the last mail drop of the national coordinated borrower outreach launch:
  - Promontory complaint review is complete.

### **3. Complaints Quality Assurance**

#### **a. Quality Assurance Overview**

Promontory's Quality Assurance team will perform quality reviews of the Complaint Process.

The Quality Assurance team will perform random sampling of the Foreclosure Complaint Process.

Promontory will describe its approach to quality assurance of the Foreclosure Complaint Process in an updated version of this methodology.

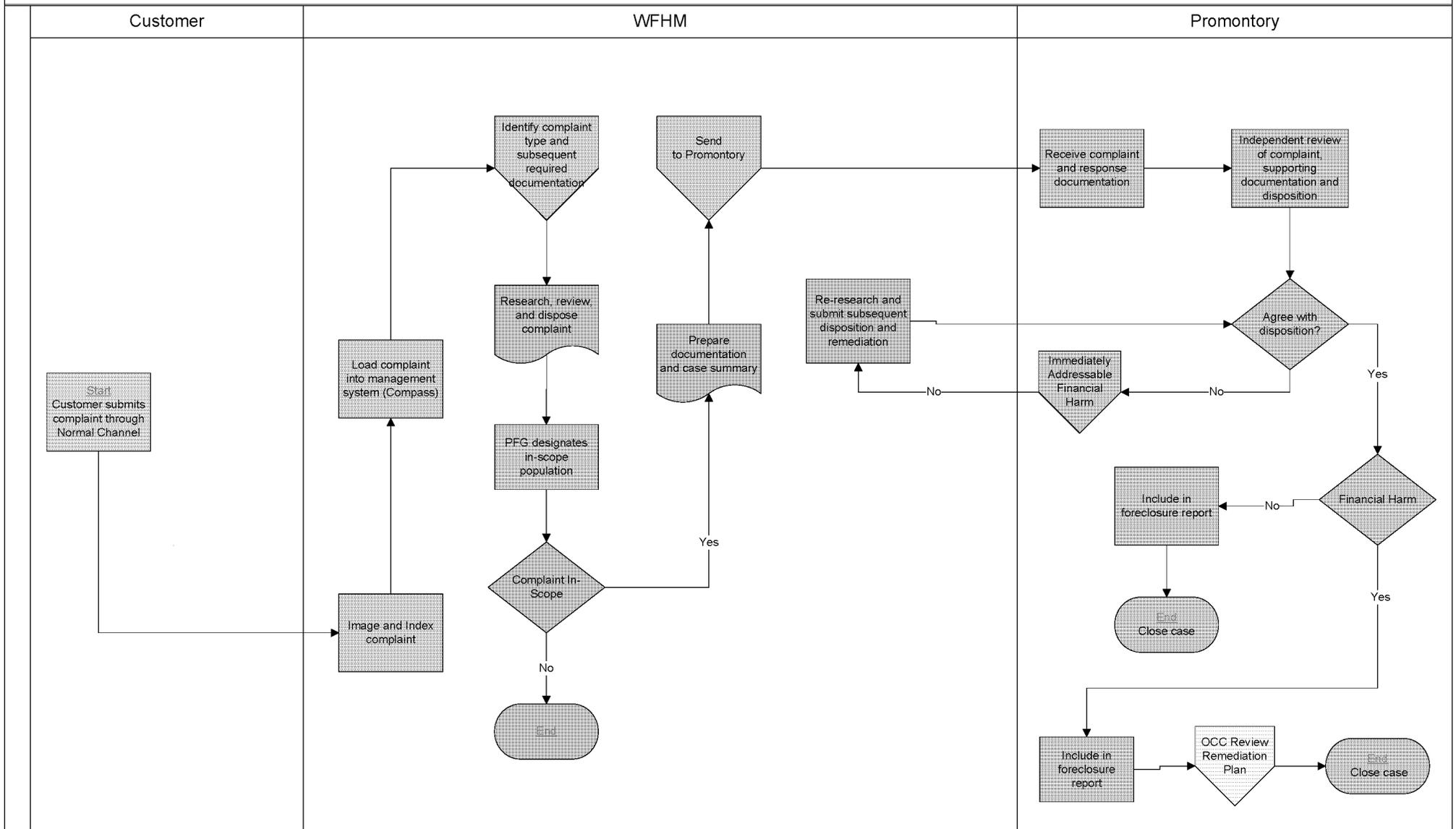
#### **4. Remediation**

Wells Fargo and Promontory anticipate that Wells Fargo will promptly remediate any borrower found through the Complaint Process to have suffered financial injury. Wells Fargo will prepare and propose to Promontory or the OCC, as the OCC may direct, a general plan for remediation and, following approval of that plan, will make remediation in accordance with that plan.

#### **5. Preparation and Submission of Report**

The Foreclosure Report to be submitted in accordance with the requirements of Article VII(4) will include a summary and analysis of exceptions found during the Complaint Process, together with detail appropriate to support the development of a remediation plan, including the identity of each borrower determined by Promontory to have been harmed and the nature and amount of the harm incurred to the extent of Promontory's ability to determine that amount based on the information available to Promontory.





**Attachment C**  
**Resources and Expertise**

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## Attachment C

### Resources and Expertise

This attachment describes the resources and expertise Promontory will use to complete the Foreclosure Review, including personnel and information systems. It further describes Promontory's plans for enlisting additional resources necessary to complete the Foreclosure Review in the event that initial sampling identifies needs for more extensive file review.

#### 1. About Promontory Financial Group

Former Comptroller of the Currency Eugene Ludwig founded Promontory in 2001. Our senior professional team has unusually deep experience in the management, direction and leadership of major financial institutions, financial regulatory agencies, and policymaking bodies. In the U.S., members of our firm have served as senior executives or directors of numerous leading financial institutions and financial regulatory agencies, including, to name but a few, Citigroup, Bank of America, Visa, Wells Fargo, Goldman Sachs, American Express, the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, the United States Treasury Department, and the Office of the Comptroller of the Currency.

Promontory works with the leadership of financial institutions throughout the world to identify, evaluate, and resolve issues of actual or potential concern to their directors, senior executives and regulators. We provide them with a wide range of services, including evaluation and assistance in strengthening risk management units and practices, compliance, corporate governance, and risk reporting; forensic reviews and reports; due diligence reviews; policy development; and strategic advice relating to the establishment or acquisition of new financial services businesses.

Promontory is headquartered in Washington, D.C. and maintains additional U.S. offices in New York, Atlanta, and San Francisco. We also have a substantial international practice, with affiliate offices in Dubai, London, Paris, Milan, Singapore, Sydney, Tokyo and Toronto.

Promontory has significant experience and expertise working with mortgage lenders and servicers to meet the requirements of regulatory enforcement actions, strengthen risk management or compliance, or enhance corporate governance. The firm has successfully concluded several engagements related to mortgage origination and servicing and is deeply experienced in forensic and look-back reviews and statistical analysis. Several members of Promontory's leadership and numerous members of its professional staff have spent portions of their careers in the mortgage sector, in regulatory supervision and examination of mortgage lenders, or both.

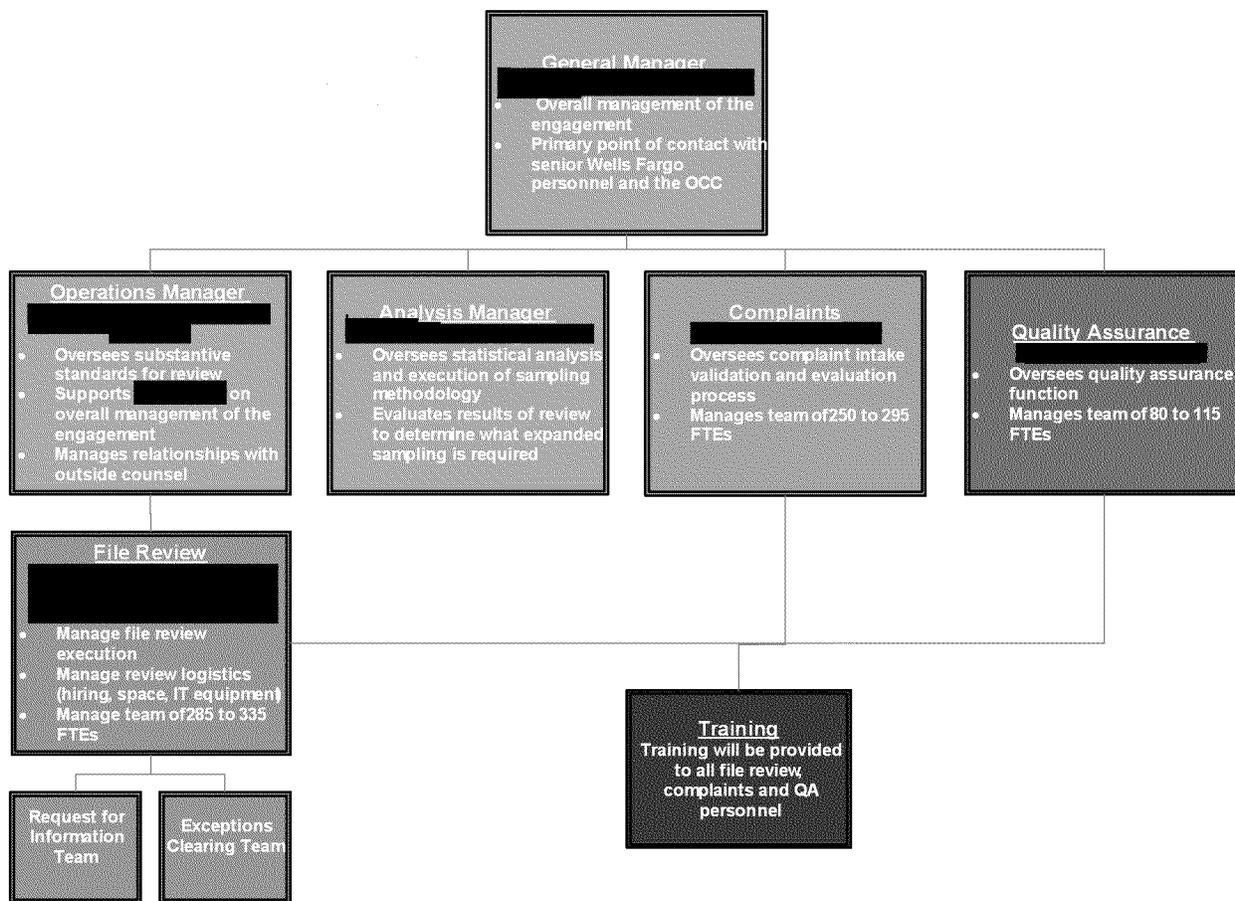
#### 2. Organizational Structure

**a. Overview**

Diagram C-1 shows the general structure of Promontory's Wells Fargo Foreclosure Review team.

Diagram C-1

**General Structure of Promontory's Wells Fargo Foreclosure Review Team**



**b. Project Leadership**

Promontory's project leadership will provide the project team with strategic direction, supervision of project management and quality assurance, liaison with OCC and Wells Fargo senior executives and directors, and quality control of the Foreclosure Review. [redacted]

[redacted] will lead the project, dedicating the majority of their time to its oversight.

[REDACTED]  
[REDACTED] In addition to [REDACTED] will serve  
as Analysis Manager [REDACTED]  
[REDACTED]

**c. File Review**

Promontory [REDACTED] and Allonhill [REDACTED] will  
be responsible for day-to-day management of the file review effort.  
[REDACTED]

[REDACTED] will be supported by:

- Two general operations managers, responsible for supervising end-to-end foreclosure review;
- Two process improvement analysts, assigned to work with process owners to improve the foreclosure review process;
- Two management information analysts, responsible for reporting key foreclosure review information on a periodic basis;
- One escalation manager, responsible for supervising the Request for Information and Exception Clearing teams;
- One quality control manager, responsible for ensuring quality control best practices identified by QA, process improvement and file review leads are implemented on the floor;
- Two system support managers, responsible for providing day-to-day system operational support; and
- Three information technology support staff.

Table C-2 shows the key working assumptions underlying Promontory's resource planning in connection with file review.

Table C-2

**File Review Resource Planning: Key Working Assumptions**

Item	Assumption
------	------------

Average analyst file review time, full (a)-(h) review	9 hours
Average analyst file review time, (g) only	6 hours
Average analyst file review time, other partial review	4.5 hours
Average senior analyst review time	3 hours
Number of files to be reviewed in Stage 1	16,949
Calendar days to complete Stage 1 file review	175
Work days	5/week
Production hours/day	6.5
Team leads/senior analyst	1:5
Additional files to be reviewed in Stages 2-3	6,400 (50% of Stage 1 sample)
Days to complete Stage 2-3 review	95
RFIs generated per file	2
RFI review time minutes per outgoing or incoming	7 minutes
Exceptions per file	0.5
Average exception clearing review hours/exception	2

#### i. Foreclosure Analysts

Both directly and through its subcontractor, Allonhill, Promontory will engage experienced subcontractors to supplement its own resources as necessary in reviewing foreclosure files, and for technical and administrative services as necessary to accomplish the Foreclosure Review at a high standard of professionalism. The primary responsibilities of foreclosure analysts will include ensuring the receipt of documentation, reviewing documentation and extracting critical data, entering necessary data into the foreclosure review system, and identifying conditions of potential errors, misrepresentations or other deficiencies. Analysts deployed on the Foreclosure Review may have college degrees but will have some experience in the mortgage sector.

Based on the assumptions set forth in Table C-2, Promontory expects to require a team of one

hundred and sixty-five to one hundred and seventy-five full-time equivalent (“FTE”) analysts on average, approximately twenty-five of whom will specialize in loss mitigation file reviews, to complete the review. Promontory will review these assumptions and adjust analyst staffing levels appropriately as it gains actual experience conducting the review of Wells Fargo files.

**ii. Senior Analysts and Team Leads**

Promontory will also hire senior analysts to supplement its existing resources, provide quality control of analyst file reviews, and further investigate foreclosure files as needed. Senior analysts may have college degrees, but will have more than three or more years of servicing experience in loss mitigation and/or foreclosure. Based on the assumptions set forth in Table C-2, Promontory expects to need approximately fifty to sixty FTE senior analysts and thirteen to seventeen team leads on average, approximately five of whom will specialize in loss mitigation file reviews, to complete the Foreclosure Review.

**iii. Request for Information Team**

As described more fully in Attachment A, the Request for Information Team will be responsible for coordinating with the File Review Team and Wells Fargo to identify, request and review missing documents. Based on the assumptions set forth in Table C-2, the team will consist of an average of nine professionals, including one senior analyst and eight information analysts, who will have skill sets and experience levels similar to those of the analysts that conduct the Level 1 file review. The Escalation Manager will supervise the Request for Information Team.

**iv. Exceptions Clearing Team**

As described more fully in Attachment A, the Exceptions Clearing Team will be responsible for reviewing information provided by Wells Fargo in response to unvalidated preliminary exceptions. Under the current assumptions of 0.5 exceptions per file and two hours of review time per exception, the team will consist of an average of eighteen to twenty professionals with skill sets and experience levels similar to those of senior analysts in the Level 1 file review and three to five team leads. The Escalation Manager will supervise the Exceptions Clearing Team.

**d. Complaint Review**

Promontory Director [REDACTED] will lead a separate unit to review foreclosure-related borrower complaints [REDACTED] has extensive experience in compliance and operational risk management as well as consumer protection matters. Complaint Reviewers will have qualifications similar to Foreclosure Analysts and Senior Analysts, sourced through similar channels.

Table C-3 shows the key working assumptions underlying Promontory’s resource planning in connection with complaint review.

Table C-3

**Complaint Review Resource Planning: Key Working Assumptions**

<b>Item</b>	<b>Assumption</b>
In-scope population	850,000 <sup>1</sup>
Mail response rate	20%
Replied out of scope	No assumption
Incomplete	1%
January 2011 forward normal channel in-scope written complaints	50,893
Total in-scope complaints	219,193
Loss mitigation complaints	50%
Analyst review time for loss mitigation complaint	2 hours
Analyst review time for other complaint	45 minutes
FTE needed for in-take processing validation	4
Foreclosure Complaint Process expected start date	September 12
Production hours/day	6.5
Days to complete complaint review	270 calendar days
Work days per week	5
Senior analyst /analyst ratio	1:10

Based on these assumptions, Promontory expects to require a Complaint Review team averaging two

<sup>1</sup> The figure of 850,000 for the in scope population for complaints is lower than the in scope population for the file review. Because the resource implications for complaints are more sensitive to the total population (whereas the file review resource implications are more sensitive to the sample, not the total population), we have for planning purposes assumed that the total population will be reduced by an estimated number of properties that were not owner occupied.

hundred forty five to two hundred ninety five analysts, twenty four to twenty nine senior analysts, two complaint operations managers, one complaint process manager, one complaint RFI manager, two RFI analysts, one general analyst, , one information technology systems and analytics manager, two management information analysts, one project managers, two trainers, and three information technology support staff.

**e. Quality Assurance and Validation**

Promontory Director [REDACTED] will provide day-to-day management of the quality assurance effort as the Quality Assurance Lead. [REDACTED]

[REDACTED] The Quality Assurance team will operate independently from the primary file and complaint review teams in order to maintain objectivity. In her role as Quality Assurance Lead, [REDACTED] will report directly to [REDACTED]

Quality Assurance Analysts will be responsible for day-to-day independent review of sample files and for executing the Quality Assurance program. In addition, the Quality Assurance Team will have subject matter experts for certain topics, including financial injury, state laws, and loan modification programs, to serve as resources for the Quality Assurance Team. [REDACTED] will be supported by one quality assurance operations supervisor, one general operations manager, one project manager, one general operations support staff, seven subject matter experts, and one quality assurance management information analyst.

Table C-4 shows the key working assumptions underlying Promontory’s resource planning in connection with quality assurance and validation of the file review.

Table C-4

**Quality Assurance Resource Planning for File Review: Key Working Assumptions**

<b>Item</b>	<b>Assumption</b>
Average file review time (manual review – full (a)-(h) review files)	8 hours
Average file review time (manual review – partial review files)	4 hours
Average file review time (system-based review)	3 hour
QA coverage of files with Level 1 exceptions	
• System break-in period	100%
• Thereafter	10-15%

QA coverage of files from new analysts who start after system break-in period	25% <sup>2</sup>
QA coverage of files without preliminary exceptions (all periods)	10-15%
Days to complete stage 1 file review	175
Exception clearing QA review hours/exception	2
Work days per week	5
Production hours per day	6.5
Team Lead/staff QA Reviewer ratio	1:10

Based on these assumptions, Promontory estimates that the Quality Assurance Team for the file review will consist of approximately nineteen to twenty-three Analysts on average to provide effective oversight of Level 1 Analysts, plus approximately two Team Leads. The Quality Assurance Team will also include an average of eighteen Exceptions Quality Assurance analysts to oversee the Exceptions Clearing Team. Promontory will adjust Quality Assurance staffing levels based on actual experience and in light of refined expectations of Stage 2 and 3 sampling volumes.

The Quality Assurance Team will also perform random sampling of the complaint review process, including both out-of-scope or incomplete complaints as well as in-scope complaints deemed “closed” (i.e., those determined to have had no adverse financial impact on borrowers). Table C-5 shows the key working assumptions underlying Promontory’s resource planning in connection with quality assurance and validation of the complaint review.

Table C-5

**Quality Assurance Resource Planning for Complaint Review: Key Working Assumptions**

Number of in-scope complaints deemed non-injury	152,074
Review time per in-scope complaint deemed non-injury, loss mitigation-related	90 minutes
Review time per in-scope complaint deemed non-injury other-related	30 minutes
QA coverage of complaints	10-15 %

<sup>2</sup> Based on our time trials, we project that a new analyst will process up to eight files in the first two weeks of hiring.

Work days per week	5
Production hours per day	6.5

Based on these assumptions, Promontory estimates that the Quality Assurance Team for the complaint review will require thirty-five to forty Analysts and seven to nine Team Leads on average.

The Quality Assurance Lead will review and make hiring decisions for all candidates for Quality Assurance positions. Key qualifications for the Quality Assurance Analyst position will include several years of experience in foreclosure operations, quality control departments, mortgage servicing, or paralegal experience in foreclosure law.

#### **f. Training**

##### **i. File Review**

Promontory will provide training to all personnel performing file review services in the course of this project. Required training topics will include foreclosure timelines, loss mitigation, loan modification, servicers' responsibilities, fees/penalties, investor rules, and state specific foreclosure rules. The training sessions will include several interactive actual foreclosure case studies. In addition to this pre-deployment training, Foreclosure Review personnel will receive on-going training and feedback as issues or feedback needs arise in the course of the review.

##### **ii. Quality Assurance**

All Quality Assurance Team members will receive one week of training and orientation, focusing on: (i) types of loan documents reviewed; (ii) the organization and indexing of those documents created by Promontory/Allonhill, and the use of the document organization in the Quality Assurance process; (iii) the functionality and analytical capability of the Foreclosure Review System; and (iv) Quality Assurance objectives and protocols, including Quality Assurance documentation, reporting, and feedback requirements. The training will also encompass case studies and practice Quality Assurance sessions.

### **3. Information Systems**

Promontory has subcontracted to Allonhill for development of the [REDACTED] a semi-automated case management system for the performance of foreclosure review services consistent with the requirements of Article VII of the Consent Order. Based on a proprietary system developed by Allonhill for use in mortgage file review, the [REDACTED] has the ability to automatically load data in virtually any format and from multiple sources;

apply encoded test rules drawn from legal and other research to file data input by analysts; support file analyses by multiple parties including analysts, senior analysts, and quality assurance personnel; and provide flexible, customizable reports.

For the performance of the Foreclosure Review, Promontory and Allonhill will operate and maintain a secure office suite and fulfillment center, technical infrastructure, and co-location facility, in [REDACTED]. Promontory will also operate a secure office suite with technical infrastructure in [REDACTED]. In addition, Allonhill maintains a warm, redundant site in [REDACTED]. Both with the data and in the physical environment, Promontory and its subcontractors will practice in-depth, multi-layered security. Office security will be managed through a combination of surveillance, keycards, and other controls designed to protect the environment. The computer and network monitoring systems are both rule and heuristic based to ensure maximum efficiency. Data at rest or in motion are encrypted by a variety of approved methods. The [REDACTED] virtualization product is used to logically separate the data at the virtualization layer; this, along with the [REDACTED] for data protection, lends additional security to the data in transit and at rest.

#### **4. Contingency Plans for Analyst Recruitment**

Promontory has entered into an agreement with Robert Half, pursuant to which it expects to rely on Robert Half for assistance in sourcing the majority of senior analyst and analyst roles. Working with Robert Half, Promontory has completed the on-boarding of its initial File Review and Quality Assurance Teams in [REDACTED] where its subcontractor, Allonhill, [REDACTED]. Promontory believes it can continue to meet the file review staffing needs of this assignment sourcing senior analyst and analyst roles primarily within the [REDACTED] metropolitan area.

Notwithstanding its generally successful experience to date, Promontory has for several reasons recently concluded that it should open additional temporary facilities in other metropolitan areas. First, Promontory has recognized for some time that future developments have potential to significantly increase its project staffing needs. For example, the OCC could require substantial increases in our proposed initial sample or results of initial sampling could indicate needs for more extensive file review than currently contemplated. In addition, recent clarifications of the OCC's expectations regarding the independent complaint process and Promontory's working assumptions in regard to complaint volume have significantly increased the number of project resources we estimate this project will require.

Accordingly, in May 2011, Promontory recently requested and received from Robert Half an analysis of relevant labor market depth in several metropolitan areas and, on the strength of that analysis, determined to open additional temporary facilities in [REDACTED]. Promontory has subsequently identified an appropriate facility for lease and, through Robert

Half, has begun sourcing candidates for analyst and senior analyst roles. The ability to source additional resources in a comparatively deep labor market such as [REDACTED] provides Promontory with a strong contingency plan in the event that the scale of file review needs in connection with this project significantly exceeds current estimates. In the unanticipated event that the [REDACTED] market proves insufficient for our needs, Robert Half has identified metropolitan [REDACTED] as another labor market with a deep pool of labor appropriately skilled to assist in execution of the Foreclosure Review. Promontory is currently taking no steps to identify or open additional project facilities in metropolitan [REDACTED].

Promontory has also entered into agreements with both Grant Thornton and PwC for the specific purpose of having contingent access to large bodies of additional human resources. Although we do not currently envision sourcing project resources from either Grant Thornton or PwC, these firms are also available to us, subject to OCC review of any potential independence concerns, should the need arise.

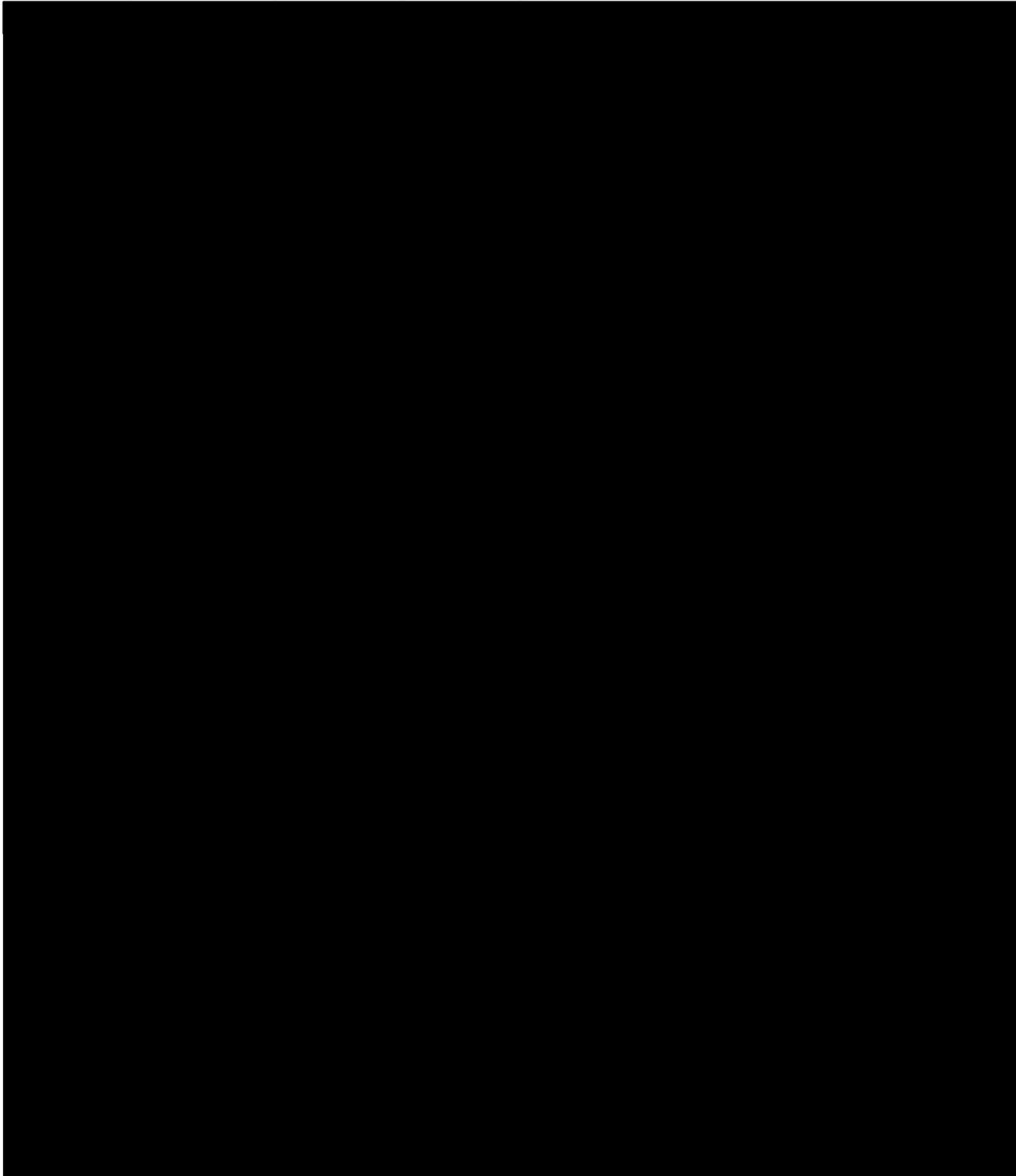
#### **5. External Resources and Sourcing**

Promontory maintains substantial in-house expertise on most aspects of financial services compliance, including in the mortgage field. Promontory has been engaged by multiple clients to perform a variety of advisory services relating to the Consent Orders and related orders of the same date issued by the Federal Reserve Board of Governors. To ensure it has adequate resources to staff these engagements simultaneously, Promontory has retained knowledgeable subcontractors, such as Allonhill, and made contingency arrangements with other providers, such as Grant Thornton and PwC, and with finder services, such as Robert Half International (“Robert Half”) and Solomon Edwards Group.

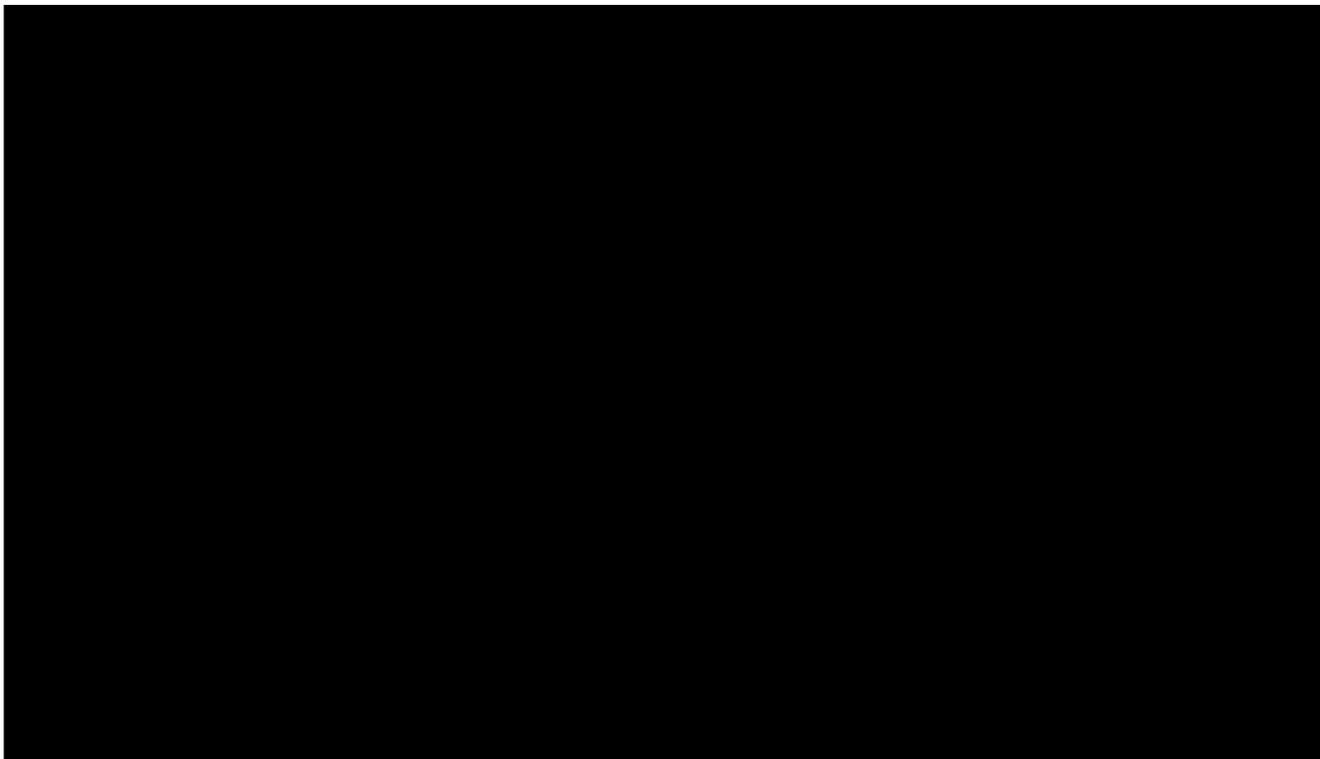
The timing, scope, and specific needs of the Foreclosure Review could, however, require Promontory to supplement its resources with additional subject-matter experts. For example, Promontory expects that the Foreclosure Review may require it to supplement its own resources with legal expertise specifically knowledgeable about applicable law in particular jurisdictions from time to time in the course of conducting this review. Promontory expects to meet this need relying on its extensive network of associations throughout the financial services, regulatory, and legal fields to obtain them. In addition, Promontory has contracted with Hudson Cook, LLP to provide additional expertise in state-by-state application of mortgage law and with McDermott Will & Emery, LLP to provide additional expertise in connection with bankruptcy and foreclosure law, and, in consultation with the OCC, is in the process of contracting with additional law firms as sources of contingent legal assistance in the event that Hudson Cook’s resources prove insufficient. Promontory will require every attorney or firm who may be retained for the provision of such advice to advise Promontory of any actual or potential conflicts of interest. Promontory will advise and consult with Wells Fargo regarding

its selections of such attorneys and firms, but Promontory, in its independent capacity and in consultation with the OCC regarding any actual or potential conflicts, will make the final decision.

**6. Project Leadership and Management Biographical Detail**



**WFB-EL-00000116 – 0120**  
**REDACTED COMPLETELY**



Promontory may adjust the composition of its teams from time to time in response to client needs and logistical considerations.

## Attachment D

### Fees

This Attachment describes the fees Promontory expects to charge Wells Fargo for services performed under this Agreement. Wells Fargo will compensate Promontory as follows:

- i. **Management Fee.** For general management of all services provided under this Agreement, management and leadership of each major workstream (file review, statistical analysis, quality assurance, complaints), interviews of, liaison with and periodic and ad hoc reporting to and consultations with members of Wells Fargo's senior management and directors and representatives of the OCC, adjustment and refinement of project planning as circumstances may require, recruitment and oversight of qualified human resources, provision of IT support and ongoing enhancement of the case management system, and similar services, a monthly fee throughout the term of this engagement based on the quantity and mix of Promontory professionals and contractors devoted to the performance of these services. As further detailed in Attachment B, Promontory currently envisions supporting this engagement with a management team comprising 18 full-time equivalents ("FTEs") on average over the course of the engagement. At an anticipated blended rate of [REDACTED] per hour, Promontory estimates its fees for management of this engagement as likely to fall in the range of [REDACTED] per month.
- ii. **Quality Assurance Fee.** For quality assurance review of exceptions at all levels of foreclosure file and complaint review, validation of system performance and system enhancements, and testing and validation of Wells Fargo's application of exclusion rules to ensure that relevant complaints route appropriately through the Foreclosure Complaint Process, an amount based on the quality and mix of Promontory professionals and contractors devoted to the performance of these services. As further detailed in Attachment B, and based on the working assumptions set forth therein, Promontory currently envisions that performance of necessary quality assurance services at a high standard of professionalism will require it to field a Quality Assurance team comprising approximately 80 to 115 FTEs on average over the course of the engagement with significant subject matter expertise. At an anticipated blended rate of [REDACTED] per hour, Promontory estimates that its fees for quality assurance in connection with this engagement are likely to fall in the range of [REDACTED] per month.
- iii. **File Review Fee.** For the services of analysts, senior analysts, team leads and mid-level management retained by Promontory to perform Level 1 file review services, request for information team services and exception clearing team services as described in Attachment A, Promontory will charge Wells Fargo an amount based on the number of professionals required to perform such services, the cost to Promontory of retaining such professionals, associated overhead costs to Promontory, and a profit margin. As further

detailed in Attachment B, and based on the working assumptions set forth therein, Promontory envisions that performance of necessary file review services at a high standard of professionalism will require it to field a file review team of analysts and senior analysts with appropriate exposure to mortgage servicing or other useful professional or educational backgrounds comprising approximately 285 to 335 FTEs on average over the course of the engagement. At an anticipated blended rate of [REDACTED] per hour, Promontory estimates that its fees for file review are likely to fall in the range of [REDACTED] per month.

iv. **Complaint Review Fee.** For 100% review and disposition of complaints submitted through the Foreclosure Complaint Process, an amount based on the number of professionals required to perform such services, the cost to Promontory of retaining such professionals, associated overhead costs to Promontory, and a profit margin. As further detailed in Attachment B, and based on the working assumptions set forth therein, Promontory envisions that performance of necessary complaint review services will require it to field a complaint review team of analysts and professionals with appropriate experience and subject matter expertise comprising approximately 300 to 345 FTEs on average over the course of the engagement. At an anticipated blended rate of [REDACTED] per hour, Promontory estimates that its fees for complaint review services are likely to fall in the range of [REDACTED] per month.

v. **Report Preparation Fee.** For analysis of Foreclosure Review data, preparation and quality review of the Foreclosure Review report, a single fee based on the mix and amount of professional time required to prepare the report to a high standard of professionalism, and review it for factual accuracy and tone. Based on its experience preparing similar reports, Promontory estimates this fee as likely to fall in a range of [REDACTED]

The parties acknowledge that Promontory has based the estimates provided herein upon working assumptions that may prove inaccurate in practice. Regulatory direction or the results of file review could require large adjustments in the number, qualifications, and cost of resources Promontory must devote to one or more of the types of services described above. In the event that Promontory's resource needs prove substantially larger than currently anticipated, such that Promontory must resort to one or more of the Contingency Plans for sourcing additional resources, as described in Attachment C, Promontory's hourly costs, especially for file review services, could rise above the levels estimated herein.

Promontory wishes to be able to provide Wells Fargo with greater certainty concerning the ultimate cost of this project, especially in relation to file review services. Promontory expects to be in a position to project those costs more precisely, on a per file basis, within several weeks following the commencement of file review services, and will work with management to refine the estimates provided herein at that time.

As further detailed in Section 3.k.iv.3 of the Engagement Letter, Wells Fargo also agrees to reimburse Promontory for all reasonable out-of-pocket expenses incurred in the course of providing professional services under this Agreement, such as travel, telephone, lodging expenses, etc. In the event that Promontory retains counsel to perform necessary legal research or to provide legal advice in connection with the evaluation of file review exceptions or complaints, Wells Fargo will reimburse Promontory for the associated costs; provided, however, that Promontory will not apply a markup to such costs and, prior to retaining counsel, will consult with Wells Fargo regarding both the need to retain counsel and the qualifications of counsel selected.

## Attachment E

### Project Plan

This Attachment provides a high-level Foreclosure Review Project Plan. The Parties intend this Plan to be a working document, subject to periodic revision upon mutual agreement of the Parties throughout the performance of services pursuant to this Agreement.

Wells Fargo Foreclosure Review Program Planning -- DRAFT August 31, 2011			Responsibility				
<i>Confidential</i>							
"Not Started"		Activity not begun	WF	PFG	AH	Status	Estimated Completion Date
"In Process"		Activity begun and not Completed					
"Completed"		Activity is Completed					
"On Going"		Activity has been vetted in the "In Process" and is now part of Execution					
"Behind Sch."		Activity is in ISSUE status					
Activity							
1	Establish Foreclosure Review Planning Phase					Completed	
	1.1	Establish core team				Completed	
	1.2	Set meeting schedules				Completed	
	1.3	Establish management oversight structure				Completed	
	1.4	Establish reporting on progress/issues to workstream leads				Completed	
	1.5	Draft project plan for the Planning Phase				Completed	
	1.6	Review project plan for the Planning Phase				Completed	
	1.7	Finalize project plan for the Planning Phase				Completed	
2	Develop and Draft Sampling/Review Methodology					On Going	
	2.1	Designate working group				Completed	
	2.2	Research background data				Completed	
	(a)	Produce management reports on loan data/segmentation				Completed	
	(b)	Produce information on prior reviews (internal and external)				Completed	
	2.3	Research Wells Fargo system capability to segment/tabulate data				Completed	
	2.4	Develop sampling criteria				Completed	
	2.5	Determine acceptable error rate				Completed	

(a)	Conduct informal research (industry best practices & OCC/Fed guidance )				Completed	
(b)	Develop options for error tolerance rate				Completed	
(c)	Present options to management and obtain input				Completed	
<b>2.6</b>	<b>Design sample selections</b>				<b>On Going</b>	
(a)	Initiate initial sampling				Completed	
(b)	Analyze stage one results and provide stage two sampling				Not Started	1/16/2012
(c)	Data validation				In Process	10/1/2011
<b>2.7</b>	<b>Develop Review Methodology consistent with Article VII, Section 3 of the Order</b>				<b>On Going</b>	
(a)	Determine information systems and documents to be reviewed				Completed	
(b)	Develop selection criteria for cases (mortgage files) to be reviewed				Completed	
(c)	Develop File Review procedure				On Going	
(d)	Develop Complaint Review procedure				On Going	
(e)	Develop QA Review procedure				On Going	
<b>2.8</b>	<b>Draft File Review methodology and submit as attachment to required OCC Engagement Letter for conditional approval</b>				<b>Completed</b>	
<b>2.9</b>	<b>Draft End to End File Review procedure and submit as attachment to required OCC Engagement Letter for final approval</b>				<b>In Process</b>	<b>8/31/2011</b>

<b>3</b>	<b>Develop Federal and State Legal Foreclosure Standards</b>		Hudson Cook		<b>In Process</b>	
3.1	Identify and retain state counsel in all 50 states				Completed	
3.2	Obtain 54-jurisdiction survey from state counsel				Completed	
3.3	Obtain 54-jurisdiction survey for look back period				Completed	
3.4	Assess sufficiency of 54-jurisdiction surveys against Order requirements				Completed	
3.5	Compile federal survey				Completed	
(a)	Identify and obtain legal resources				Completed	
(b)	Identify federal standards				Completed	

3.6	Develop inventory for legal documents				Completed	
3.7	Prioritize states and respective legal standards for coding Foreclosure Review process				Completed	
3.8	Assemble all legal standards for business rule writers				Completed	
3.9	Deliver federal and state legal business rules to IT development team				In Process	12/13/2011

4	Prepare Electronic Files and Data				On Going	
	4.1 Identify relevant electronic information and servicing platforms for the Wells Fargo set of portfolios for File Review; (i) Pick-a-Pay portfolio, (ii) Home Mortgage portfolio, (iii) Home Equity portfolio and (iv) WFF portfolio.				Completed	
	4.2 Develop methodology for receiving electronic files from Wells Fargo in respective portfolio				Completed	
	4.3 Index imaged files				Completed	
	4.4 Review electronic files to determine data elements & format				Completed	
	4.5 Upload initial batch of electronic Review Files				Completed	
	4.6 Conduct QC review of initial batch of electronic Review Files				Completed	
	4.7 Conduct QC review of sample files				On Going	

5	Develop Methodology for Penalties and Fees				In Process	
	5.1 Review electronic file formats for capture of penalty and fee data				Completed	
	(a) Identify gaps/data issues and determine if supplemental electronic or hard copy information is required				Completed	
	(b) Request supplemental information in necessary format				Completed	

5.2	<b>Determine permissible penalties/fees and penalty/fee frequency for each State for each product inclusive of any changes during the timeframe as identified in the Order</b>				In Process	10/17/2011
(a)	Identify and obtain legal counsel for determining State permissible penalties/fees and frequency of penalties/fees				Completed	
(b)	Develop state fee matrices				Completed	
(c)	Develop business rules to convert permissible penalties/fees and penalty/fee frequency for each State into system coding				In Process	10/1/2011
(d)	Validate business rules				In Process	10/17/2011
5.3	<b>Determine permissible penalties/fees and penalty/fee frequency for applicable Federal law for each product inclusive of any changes during the timeframe as identified in the Order</b>				Completed	
(a)	Research applicable Federal law limits				Completed	
(b)	Develop business rules to convert permissible penalties/fees and penalty/fee frequency for Federal law limits into system coding				Completed	
(c)	Validate business rules				Completed	
5.4	<b>Determine permissible penalties/fees and penalty/fee frequency for applicable mortgage instruments for each product inclusive of any changes during the timeframe as identified in the Order</b>				Completed	
(a)	Develop business rules to test for permissibility of mortgage instrument penalties/fees limits				Completed	
(b)	Validate business rules				Completed	
5.5	<b>Determine all customary penalties/fees and penalty/fee frequency including those for GSEs, FHA, VA, and USDA for each product inclusive of any changes during the timeframe as identified in the Order</b>				In Process	10/18/2011
(a)	Research applicable investor guide fee standards				Completed	

(b)	Develop customary fee matrices				Completed	
(c)	Develop business rules to convert customary GSEs, FHA, VA, USDA for each product penalties/fees and penalty/fee frequency into system coding				In Process	10/11/2011
(d)	Validate business rules				Not started	
<b>5.6</b>	<b>Determine actions that impact reasonableness of fees and penalties and develop criteria for system coding</b>				<b>In Process</b>	<b>9/18/2011</b>
(a)	Synthesize and deliver all additional actions that impact reasonableness criteria for system coding				Completed	
(b)	Develop business rules to convert the impact of reasonableness into system coding				In Process	9/13/2011
(c)	Validate business rules				Not started	

<b>6</b>	<b>Develop Methodology for Financial Injury</b>				<b>In Process</b>	
<b>6.1</b>	<b>Incorporate final guidance into methodology</b>				<b>In Process</b>	<b>TBD</b>
(a)	Determine and record Loan Modification actions that impact fees and penalty assessment				In Process	TBD
(b)	Determine and record other bank actions that impact fee and penalty assessment				In Process	TBD
<b>6.2</b>	<b>Determine additional actions that may result in financial harm</b>				<b>On Going</b>	
(a)	Identify and record errors resulting in financial harm				On Going	
(b)	Identify and record misrepresentation resulting in financial harm				On Going	
(c)	Identify and record other deficiencies resulting in harm				On Going	
(d)	Synthesize and deliver all additional actions criteria for system coding				On Going	
(e)	Develop protocol to convert financial injury criteria into system coding.				In Process	TBD

<b>7</b>	<b>Develop Methodology for Loss Mitigation</b>				<b>In Process</b>	
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<b>7.1</b>	<b>Define loss mitigation review process</b>					<b>11/2/2011</b>
(a)	Define Manual versus System Components of loss mitigation review				In Process	11/2/2011
(b)	Develop loss mitigation review policies				In Process	10/17/2011
(c)	Develop loss mitigation review process flow				In Process	10/17/2011
(d)	Procure all tools, models, and calculators for loss mitigation review				In Process	10/6/2011
(e)	Develop loss mitigation desktop procedures and desktop aids for loss mitigation review				In Process	11/2/2011
<b>7.2</b>	<b>Develop P&amp;P loss/mitigation work flow</b>				<b>In Process</b>	<b>10/24/2011</b>
<b>7.3</b>	<b>Develop HAMP Business Rules</b>				<b>In Process</b>	<b>9/6/2011</b>
(a)	Define Current HAMP Business Rules				Completed	8/15/2011
(b)	Define Historical HAMP Business Rules with Dates				Completed	8/18/2011
(c)	Insert Date Ranges into Business Rules				Completed	8/19/2011
(e)	Internally Validate HAMP business rules and deliver to IT				Not Started	9/12/2011
<b>7.4</b>	<b>Develop Proprietary and Non-HAMP Program Business Rules</b>				<b>In Process</b>	<b>10/24/2011</b>
(a)	Define Current Proprietary and Non-HAMP Business Rules				In Process	9/30/2011
(b)	Define Historical Business Rules with Dates				In Process	10/6/2011
(c)	Insert Date Ranges into Business Rules				Not Started	10/13/2011
(e)	Internally Validate Proprietary & Non-HAMP Business Rules & Deliver to IT				Not Started	10/25/2011

<b>8</b>	<b>Develop RFI/EC Protocols</b>				<b>On Going</b>	
<b>8.1</b>	<b>Hire RFI Manager</b>				<b>Completed</b>	
<b>8.2</b>	<b>Define RFI/EC Scope</b>				<b>Completed</b>	
(a)	Draft RFI/EC Policies and Procedures				In Process	9/2/2011
(b)	Finalize RFI/EC Policies and Procedures				In Process	9/9/2011
<b>8.3</b>	<b>Develop process for initial file receipt, including trailing documents</b>				<b>Completed</b>	
<b>8.4</b>	<b>Finalize interim manual process</b>				<b>Completed</b>	
<b>8.5</b>	<b>Determine system solutions for missing document and exceptions clearing flow between WF, AH, and PFG</b>				<b>In Process</b>	<b>9/9/2011</b>

8.6	Develop and implement system solutions for missing document and exceptions clearing flow between WF, AH, and PFG				In Process	10/31/2011
8.7	Develop functionality for process monitoring and status reporting from FRS, Pipeline, other sources				In Process	9/30/2011
8.8	Finalize interim manual reporting solution: excel extract reporting				Completed	
8.9	Creation of Audit Trail				Completed	
(a)	Create back-up PFG server and bring it online				Completed	
(b)	Initiate PFG direct downloads				Completed	
(c)	Transfer WF historical documents from AH shared drive to PFG back-up server				Completed	
8.10	Creation of unified database				In Process	9/30/2011
(a)	Acquisition of hardware				Completed	
(b)	Creation of front-end user interface and reporting				In Process	9/30/2011

9	Develop QA Protocols				On Going	
9.1	Define QA scope				Completed	
9.2	Develop QA methodology				In Process	9/23/2011
(a)	Develop and draft sampling protocol utilizing guidance as provided by the OCC				Completed	
(b)	Develop QA methodology for system-based review				Completed	
(c)	Develop QA process for manual review in testing phase				In Process	9/9/2011
(d)	Implement interim QA tools (QA Screen - Access)				In Process	9/6/2011
(e)	Finalize QA process for manual review				In Process	9/23/2011
(f)	Develop and draft QA process flows for exception QA				In Process	9/16/2011
9.3	Identify additional QA location				In Process	9/15/2011
9.4	Recruit QA resources and train across all locations				In Process	12/15/2011
9.5	Establish Reporting Requirements				Completed	

9.6	Implement interim QA reporting requirements (Access)				In Process	9/23/2011
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10	Resources, Logistics & Training				On Going	
10.1	Identify resources necessary to execute File Review				Completed	
(a)	Develop hardware and software requirements for logistics and resources.				Completed	
(b)	Estimate staffing resource needs for File Review, Complaints & QA processes				Completed	
10.2	Acquire Property				In Process	11/1/2011
10.3	Acquire Personnel				In Process	11/1/2011
10.4	Acquire Hardware and Software				In Process	11/1/2011

11	Configure Foreclosure Review System				In Process	
11.1	Identify and make changes to configuration that are necessary to address client specific characteristics of electronic and hard copy data				Completed	
11.2	Identify, prioritize and make changes to configuration that are necessary to address identified legal standards.				On going	
11.3	Identify, prioritize and make changes to configuration that are necessary to address the financial injury and reasonable of fees and penalties issue				On going	
11.4	Develop business logic				On going	
11.5	Develop Code				On going	
11.6	System Test				On going	
11.7	UAT Test				On going	
11.8	Revise Code as required				On going	
11.9	Sign Off on System Configuration				On going	

12	Prepare Engagement Letter				Completed	
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12.1	<b>Determine form and content of engagement letter</b>				Completed	
12.2	<b>Determine form and content of key attachments</b>				Completed	
(a)	Description of information systems and documents to be reviewed				Completed	
(b)	Selection criteria for cases				Completed	
(c)	Criteria for evaluating reasonableness of fees and penalties				Completed	
(d)	Other procedures necessary to make required determinations				Completed	
(e)	Sampling techniques (initial and additional sampling)				Completed	
(f)	Restitution criteria and process				Completed	
(g)	Expertise and resources				Completed	
(h)	Other provisions mandated by Article VII (see Order provisions 2(c) & 2(d))				Completed	
12.3	<b>Prepare initial draft letter and attachments</b>				Completed	
12.4	<b>Obtain WF feedback</b>				Completed	
12.5	<b>Prepare revised draft engagement letter and attachments</b>				Completed	
12.6	<b>Obtain WF feedback on revised documents</b>				Completed	
12.7	<b>Prepare final draft engagement letter and attachments</b>				Completed	
12.8	<b>Submit final engagement letter for OCC review</b>				Completed	

## Attachment F

### Security and Access Provisions



#### **1. System/Facilities Access.**

Vendor will execute all documents required by Wells Fargo for access to Wells Fargo's computing environment or other restricted access area. Except as may be specifically set forth in a Statement of Work, Vendor represents and warrants that: (1) it will not alter or disable any hardware or software security programs residing on Wells Fargo's hardware or systems, or (2) allow unauthorized traffic to pass as a result of its access into Wells Fargo's networks. If Vendor does allow unauthorized traffic to pass into Wells Fargo's networks, Wells Fargo may immediately terminate this access. Further, if any individual, at any time during the life of this Agreement, is granted remote access to Wells Fargo's network, or is telecommuting in any capacity, then such person will be subject to additional Wells Fargo data security requirements, which additional requirements Wells Fargo will provide in writing to Vendor. Upon receipt of such written requirements, Vendor shall have fifteen (15) business days in which to review the same and if the subject individual cannot comply with such requirements,, then Vendor may notify Wells Fargo in writing and may substitute another individual, elect not to authorize remote access or telecommuting or terminate this Agreement and the applicable SOW. Vendor agrees that it will prohibit Vendor Personnel from possessing weapons or firearms of any kind on Wells Fargo's premises.

#### **2. Network Connections.**

If a network connection is established between Wells Fargo and the computing environment(s) used by Vendor to perform the Services, Vendor will ensure that (1) Wells Fargo is permitted to perform network assessments of such computing environment(s) based on a mutually-agreed schedule, and (2) Vendor maintains an alert status regarding the security of such computing environments, including all vulnerabilities and security patches or corrective actions, by subscribing to an industry-recognized service, such as CERT or CIAC. Further, Vendor will permit Wells Fargo to conduct appropriately-scoped penetration testing on a schedule mutually agreeable to the Parties, or will furnish Wells Fargo with independent auditor reports of such testing of its systems, which testing must occur on at least an annual basis. Vendor understands that, should a Wells Fargo assessment or determination reveal inappropriate or inadequate security based on the pre-defined requirements for security, Wells Fargo may, in addition to other remedies it may have, remove access by Vendor Personnel to the Wells Fargo network until Vendor satisfactorily complies with the applicable security requirements.

#### **3. Data Safeguards.**

Vendor maintains commercially reasonable safeguards against the destruction, loss, alteration of or unauthorized access to its clients' confidential information, including, without limitation, Wells Fargo's Confidential Information in the possession of Vendor Personnel, which safeguards include policies for the disposal/destruction of any such data that are commensurate with the sensitivity of the materials to be disposed, but are otherwise in accordance with the terms of this Agreement regarding the return and/or destruction of Wells Fargo's Confidential Information.

#### **4. Encryption.** Pursuant to the terms of **Section VIII.B.3 (Encryption).**

**5. Vendor and Wells Fargo Equipment.**

If Vendor connects to any Wells Fargo network, Wells Fargo has the option of providing Vendor with Wells Fargo owned or leased computer equipment and software (“Wells Fargo Equipment”). The Wells Fargo Equipment is and will remain the property of Wells Fargo, and Vendor has no right, title, or interest in the Wells Fargo Equipment. Further, if Vendor Personnel are given access to any Wells Fargo physical location, computing equipment, applications (e.g., e-mail, word processing, spreadsheet, presentation, database software, etc.), or the Wells Fargo computer network, whether using Wells Fargo Equipment or using its own equipment, (a) Vendor will require Vendor Personnel comply with Wells Fargo’s policies and procedures communicated in writing for such use and access (i.e., mobile devices require hard-disk encryption, such as PointSec), (b) such equipment will only be used as necessary to perform the Services. Vendor-supplied equipment must meet the specifications of Wells Fargo as defined in the applicable Statement of Work. The equipment supplied by Vendor is and will remain the property of Vendor and Wells Fargo has no right, title or interest in the equipment supplied by Vendor. Vendor will immediately return to Wells Fargo any Wells Fargo Equipment provided to Vendor when the Agreement, or the applicable Statement of Work, terminates.

**8. Vendor Personnel.**

All references to Vendor in this **Exhibit 2** apply with equal force to all categories of Vendor Personnel that Vendor uses in the performance of Services.

## Attachment G

### Out of Pocket Expenses Reimbursement Policy



Out-of-pocket expenses incurred in connection with this Agreement will be subject to the following:

- A. Vendor will invoice fees for out-of-pocket expenses to Wells Fargo on a monthly basis.
- B. Itemization and receipts are required for all expenses.
- C. Travel time is not billable.
- D. Wells Fargo may require Vendor personnel to use lodging and travel arranged through Wells Fargo's offices. Out-of-pocket expenses must be approved in advance by Wells Fargo, and the following guidelines apply to these types of expenses:
  - 1. Lodging. For less than one month, a single hotel/motel room at prevailing commercial rates within a reasonable distance from job location.
  - 2. Meals. At actual cost (in accordance with applicable IRS guidelines, determined by geography).
  - 3. Airline Fares. At actual cost for commercial coach or economy class (with copy of airline ticket).
  - 4. Ground Transportation. In accordance with applicable IRS guidelines. Commercial shuttle services or hotel transportation to and from the airport should be used whenever practicable. Taxi service should only be used if such transportation is not available, or in emergency situations.
  - 5. Auto Rental. Auto rental should only be used with Wells Fargo's prior approval, and should be at actual cost for commercial standard size automobile, including operating expenses, if any.
  - 6. Parking Fees. Auto parking for site visits, attendance at meetings and parking associated with lodging.
  - 7. Tolls. Fees paid for bridge, highway and other public or private tolls.
  - 8. Duplicating and other Document Production Charges.
  - 9. Delivery Charges. Charges for mail, messenger/courier and overnight delivery.

## Attachment H

### Dispute Resolution Procedures



The steps for Dispute Resolution are set forth below:

1. The complaining Party's representative will notify the other Party's representative in writing of the Dispute, and the non-complaining Party will exercise good faith efforts to resolve the matter as expeditiously as possible.
2. In the event that such matter remains unresolved ten (10) days after the delivery of the complaining Party's written notice, a senior representative of each Party will meet or participate in a telephone conference call within five (5) business days of a request for such a meeting or conference call by either Party to resolve the Dispute.
3. In the event that the meeting or conference call specified in 2 above does not resolve the Dispute, the President, Chief Operating Officer or Senior Vice President of each Party will meet or participate in a telephone conference call within five (5) business days of the request for such a meeting or conference call by either Party to discuss a mutually satisfactory resolution of the Dispute.
4. If the Parties are unable to reach a resolution of the Dispute after following the above procedure, any Dispute will be resolved by binding arbitration in accordance with the terms of this **Exhibit 4**, except as otherwise set forth below. Any Party who fails or refuses to submit to arbitration following a lawful demand by any other Party will bear all costs and expenses incurred by such other Party in compelling arbitration of any Dispute.
5. **Governing Rules.** Arbitration proceedings will be administered by the American Arbitration Association ("AAA") or such other administrator, as the Parties will mutually agree upon. Arbitration will be conducted in accordance with the AAA Commercial Arbitration Rules. If there is any inconsistency between the terms hereof and any such rules, the terms and procedures set forth herein will control. All Disputes submitted to arbitration will be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration will be conducted at a location in California selected by the AAA or other administrator. All statutes of limitation applicable to any Dispute will apply to any arbitration proceeding in accordance with choice of law under **Section XIV.I (Governing Law)**. The parties may undertake such discovery as may be approved by the arbitration panel. Judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction; provided however, that nothing contained herein will be deemed to be a waiver, by any Party that is a bank, of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.
6. **No Waiver; Provisional Remedies.** No provision hereof will limit the right of any Party to obtain provisional or ancillary remedies, including injunctive or other equitable relief, attachment or the appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of any such remedy will not waive the right of any Party to compel arbitration or reference hereunder.
7. **Arbitrator Qualifications and Powers; Awards.** Arbitrators must be active members of the State Bar in the state in which the arbitration is held or retired judges of the state or federal judiciary of the state in which the arbitration is held, with expertise in the substantive laws applicable to the subject matter of the Dispute. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (a) will

resolve all Disputes in accordance with Governing Law, (b) may grant any remedy or relief that a court of the state in which the arbitration is held could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award, and (c) will have the power to award recovery of all costs and fees, to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Rule of Civil Procedure in the state in which the arbitration is held or other applicable law. Any Dispute in which the amount in controversy is \$5,000,000 or less will be decided by a single arbitrator who will not render an award of greater than \$5,000,000 (including damages, costs, fees and expenses). By submission to a single arbitrator, each Party expressly waives any right or claim to recover more than \$5,000,000. Any Dispute in which the amount in controversy exceeds \$5,000,000 will be decided by majority vote of a panel of three arbitrators.

8. **Judicial Review.** The Parties will have in addition to the grounds referred to in the Federal Arbitration Act for vacating, modifying or correcting an award (provided that any such modification shall not exceed the negotiated limitation of liability set forth in this Agreement), the right to judicial review of (i) whether the findings of fact rendered by the arbitrators are supported by substantial evidence, and (ii) whether the conclusions of law are erroneous under Governing Law. Judgment confirming an award in such a proceeding may be entered in any court of competent jurisdiction.
9. **Miscellaneous.** To the maximum extent practicable, the AAA, the arbitrators and the Parties will take all action required to conclude any arbitration proceeding within one hundred and eighty (180) days of the filing of the Dispute with the AAA. No arbitrator or other Party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a Party required in the ordinary course of its business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. This arbitration provision will survive termination, amendment or expiration of the Agreement or any relationship between the Parties.

**Attachment I**

**Promontory's Conflicts of Interest Policy**

