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MEMO TO: Governance, Ethics, and Transparency Committee

F R O M: Michael J. Molina



Chair, Governance, Ethics, and Transparency Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES
FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS** (GET-19)

The attached informational document pertains to Item 19 on your Committee's agenda.

CM:MHP:meetingmaterials:GET:transGET19:grs

Attachment



EXECUTIVE CHAMBERS

HONOLULU

DAVID Y. IGE
GOVERNOR

April 18, 2018

Catherine P. Bessant
Chief Operations and Technology Officer
Bank of America
100 North Tryon Street
Charlotte, NC 28255

Dear Ms. Bessant:

I am writing to invite you to Hawai'i this summer to meet with Kehau Filimoe'atu of Nā Po'e Kōkua in order to reach a fair and final settlement of Bank of America's outstanding \$150 million commitment to the Hawaiian people on their homelands. I am offering to serve as host for these talks.

As the governor of Hawai'i, I am strongly urging that the Bank of America finalize its \$150 million Hawaiian commitment before August 10, 2018, the 20th anniversary of meetings on O'ahu and Maui between a delegation of executives from NationsBank and Bank of America with Hawaiian kūpuna (elders), state leaders and Nā Po'e Kōkua, which is the fiscal sponsor and institutional home of the Hawai'i Fair Lending Coalition (hereafter referred to collectively as NPK/HFLC).

It is my understanding that the Hawai'i meetings were the result of an agreement that NationsBank reached with NPK/HFLC on June 28, 1998 in response to Bank of America's failure to meet its Hawaiian commitment by the mid-1998 deadline. In its August 17, 1998 order approving NationsBank's merger with Bank of America, the Federal Reserve Board specifically referenced a NationsBank statement that the new post-merger Bank of America would honor its \$150 million Hawaiian commitment.¹

This commitment was first made in connection with Bank of America's 1993 application to acquire Liberty Bank in Honolulu, which was challenged by NPK/HFLC. The Federal Reserve Board's May 31, 1994 order approving Bank of America's acquisition of Liberty Bank was "specifically conditioned upon compliance with all of the commitments made by BankAmerica in connection with this application,"² which included Bank of America's "commitment of \$150 million to the FHA 247 loan program."³

¹ Board of Governors of the Federal Reserve System. *Order Approving the Merger of Bank Holding Companies: NationsBank Corporation Charlotte, North Carolina* • August 17, 1998, p. 62

² *Ibid.*, 630

³ Letter from Patrick S. Antrim, Senior Counsel, Bank of America to Surjeet Sidhu, Senior Financial Analyst, Board of Governors of the Federal Reserve System, 16 May 1994.

Catherine P. Bessant
April 18, 2018
Page Two

Unfortunately, June 2018 marks the 20th year that Bank of America continues to be delinquent on its "four-year commitment to provide \$150 million in residential mortgage loans for native Hawaiians seeking housing on Department of Hawaiian Home Lands."⁴

I am attaching a letter that Ms. Filimoe'atu sent to you on August 24, 2014 that includes a May 3, 2012 letter to her from then Chairman of the Hawaiian Homes Commission, Albert "Alapaki" Nahale-a. I believe that together these two letters provide a fair outline of the history of Bank of America's Hawaiian commitment.

Since becoming the governor of Hawai'i, my cabinet members and I have been working hard to address Hawai'i's intractable affordable housing crisis, including the challenges of homelessness. Tragically, native Hawaiians represent a significant proportion of our state's houseless and under-housed population. One important part of the solution for native Hawaiian families is a home on Hawaiian home lands. However, because of the unique characteristics of these trust lands, access to capital for these families is a real and ongoing challenge. Fulfilling Bank of America's commitment could be an important part of addressing this challenge.

I look forward to hosting you so that you and Nā Po'e Kōkua can do the work necessary to fulfill Bank of America's commitment in Hawai'i. If you are open to accepting this invitation, please RSVP to William (Billy) Oku, Jr. of my office by April 25 with dates in June or July when you can come to Hawai'i. Mr. Oku may be reached at (808) 586-0034 or via email at William.F.Oku@hawaii.gov

I look forward to working with you to reach a long-overdue resolution to this pressing issue.

With warmest regards,



David Y. Ige
Governor, State of Hawai'i

Attachment

⁴ Board of Governors of the Federal Reserve System. *Order Approving Acquisition of a Bank: BankAmerica Corporation San Francisco, California. Federal Reserve Bulletin* • July 1994, p. 628

**c: Kehaulani Filimoe'atu
Nā Po'e Kōkua/Hawai'i Fair Lending Coalition**

**The Honorable Brian E. Schatz
United States Senate**

**The Honorable Mazie K. Hirono
United States Senate**

**Brian T. Moynihan
Chief Executive Officer, Bank of America**

**Anne M. Finucane
Vice Chair & Chair ESG Committee, Bank of America**



August 24, 2014

Aloha Cathy,

I hope that this letter finds you and your family well. It is amazing to think that it was 16 years ago this month when you traveled to Hawaii to meet with our kupuna at the Iolani Palace in Honolulu and with Na Po'e Kokua and the Hawaii Fair Lending Coalition on Maui. I am attaching a picture of one of our Maui meetings — clearly we were all much younger then.

Time has passed and our children have grown (if my memory and math are correct, your daughter must be preparing for college by now — my congratulations to both of you). Many changes have taken place since you visited with us in Hawaii. Our respective responsibilities and authority have grown as I believe we have both worked hard to bring our vocation and avocation together — our *Kuleana*.

The Hawaiian word *kuleana* expresses the meaning and values I wish to convey and which I believe we hold in common. As with many Hawaiian words, *kuleana* is not easily translated into English. *Kuleana* is often simply defined as responsibility, but it also embodies deeper values found in the words concern, community, accountability, authority and obligation.

It has been a pleasure following your career over the past 16 years. Clearly your *kuleana* has broadened not only at Bank of America but also within your local community and our wider world. Given the forthrightness that you communicated with our kupuna 16 years ago in reaffirming Bank of America's \$150 million commitment to our Hawaiian people as well as the establishment of a native Hawaiian owned bank, it is our belief that Bank of America's commitment to Hawaiians continues within your *kuleana*. And in this we have *kuleana* in common.

My *kuleana* in this respect was broadened two years ago when I received the attached letter from the chairman of the Hawaiian Homes Commission notifying us that the Commission had voted unanimously *"to support the Hawaii Fair Lending Coalition in its efforts to negotiate with Bank of America on behalf of our beneficiaries in order to achieve a formal settlement so that BofA's \$150 million commitment can finally be fulfilled."* As Na Po'e Kokua has served as the fiscal sponsor and institutional home of the Hawaii Fair Lending Coalition for more than two decades, I am reaching out to you as the chair of NPK's board on behalf of the Coalition.

Shortly after receiving the Commission's letter, we communicated with Bank of America and its regulators to ensure that they had knowledge of the Commission's action and support of our efforts. Since then we have taken the time to seek counsel from our kupuna and other leaders within our community to ensure that we would come to you with a fair and equitable resolution that will allow us to create mutual value and fulfill our common *kuleana*.

It is in this spirit that I am reaching out to you now so that we may address the following three conclusions of the Hawaiian Homes Commission regarding Bank of America's \$150 million commitment:

- a. That the Deputy to the Chair "signed off" on the commitment without approval of the Hawaiian Homes Commission;*
- b. That the expansion of the scope of the commitment which allowed BankAmerica to claim a credit of \$3 and \$4 for every dollar they invested in infrastructure - thereby reducing their balance at a faster rate - was not brought before the Commission; and*
- c. That no "late fee" - such as was agreed to in 1998 - was charged to BankAmerica for being nine years late in fulfilling its \$150 million commitment.*

As my purpose for writing to you is to establish where we have Kuleana in common, I will not address the Commission's conclusions in detail at this time. Also, we are not raising questions at this point about the validity of the numbers offered by Bank of America in 2007 regarding performance on its Hawaiian commitment.

Instead I would like to offer a good faith starting point by providing a framework for addressing the issue of the late fee and the establishment of a native Hawaiian controlled bank. I asked Ian Chan Hodges to plug in the numbers provided by Doug Woodruff and submitted to the Federal Reserve during FleetBoston merger into the late fee formula outlined in the May 21, 1998 memo to Bank of America. This was the framework that we used for discussions with you, Doug, James and Jim which led to Bank of America's \$3.5 million commitment in 1998 to capitalize the Hawaiian bank.

This formula doesn't take into account appreciation in home value, mortgage interest deductions or other benefits of home ownership. It simply calculates the amount of principal that would have been paid down over a specific period if the mortgages the bank committed to finance were originated on time. This is the basic — not comprehensive — opportunity cost that has been shouldered by the Hawaiian people over the past 20 years.

The resulting number for the basic late fee is \$16.2 million. This amount is based on the \$80.6 million that Doug Woodruff agreed was outstanding as of December of 2003 and the performance numbers offered by Bank of America in 2007 regarding its Hawaiian commitment. However, if the performance numbers were limited to mortgages originated on Hawaiian Home Lands and grants to support the creation of a native Hawaiian bank, then \$40.4 million of the commitment remains outstanding today and Bank of America's late fee is currently \$31.5 million.

Cathy, I know that putting specific dollar amounts (in the millions no less) in my letter would likely cause the average bank executive to cynically conclude that this is just "about the money." However, I have faith that you remember that day 16 years ago when you joined us on the palace grounds with hundreds of our kupuna who were given hope by your presence and words. Money is certainly an issue here, but fulfilling our kuleana is ultimately what matters.

Mahalo,



Kehaulani Filimoe'atu

(NPK/HFLC)



NEIL ADERCRONBIE
GOVERNOR
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1379
HONOLULU, HAWAII 96805

ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN
HAWAIIAN HOMES COMMISSION
MICHELLE K. KAUIHANE
DEPUTY TO THE CHAIRMAN
M. WAIALEALE SARSONA
EXECUTIVE ASSISTANT

May 3, 2012

Kehaulani Filimoe'atu
Hawaii Fair Lending Coalition
P.O. Box 3006
Waikuku, HI 96793

Aloha Ms. Filimoe'atu:

In my time serving as Chair of the Hawaiian Homes Commission, I have been inspired by the grassroots work of our beneficiaries as they pursue opportunities for a better life for the Hawaiian people with creativity and tenacity. The work of the Hawaii Fair Lending Coalition is exemplary in this regard.

In challenging Bank of America's acquisition of Liberty Bank in 1993, the Hawaii Fair Lending Coalition identified loan "redlining" and other disparities in bank lending practices in Hawaiian communities, including Hawaiian Home Lands. As a result, Bank of America's acquisition of Liberty Bank was delayed for months. Finally, in its efforts to obtain regulatory approval to acquire Liberty Bank, Bank of America:

Announced a comprehensive program to enhance service to the native Hawaiian and Filipino communities. The program includes a four-year commitment to provide \$150 million in residential mortgage loans for native Hawaiians seeking housing on Department of Hawaiian Home Lands.

- Orders-FRB Bulletin Volume 80, Number 7, July 1994 p. 628

The Board of Governors' order approving acquisition of Liberty Bank concluded by stating that:

The Board's approval is specifically conditioned upon compliance with all of the commitments made by Bank of America in connection with this application and with the conditions referred to in this order... For purposes of this action, the commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

- Orders-FRB Bulletin Volume 80, Number 7, July 1994 p. 630

It is clear that the Federal Reserve Board specifically conditioned its approval of the Liberty Bank acquisition on Bank of America's compliance with its \$150 million Hawaiian Home Lands commitment, which was to be completed within four years – between July of 1994 and June of 1998.

Nearly four years later – on April 13, 1998 – Bank of America reached an agreement to merge with NationsBank in a deal that would create the largest bank in the United States. At this point – two months before the deadline to complete its \$150 million commitment to Hawaiian Home Lands – Bank of America had originated only \$3 million in qualifying loans.

On May 21, 1998, Bank of America received a memo from Ian Chan Hodges warning that the bank was in imminent danger of defaulting on its four-year \$150 million commitment to the beneficiaries of Hawaiian Home Lands. In order to avoid default, the memo demonstrated that Bank of America was obligated to pay a late fee of \$4.5 million -- a sum equal to the opportunity cost of its failure to fulfill its commitment.

The memo stated that by investing \$4.5 million in a Native Hawaiian Community Development Financial Institution (CDFI), BankAmerica should be able to avoid immediate default on its \$150 million commitment to the Federal Reserve Board.

On June 28, 1998, the Hawaii Fair Lending Coalition reached an agreement with NationsBank regarding support for the creation of a Native Hawaiian CDFI. NationsBank (and its successors) agreed to provide:

- A minimum of \$1 million invested in the Native Hawaiian CDFI and up to \$3.5 million with match.
- \$125,000 in organizing grants.
- In-kind professional assistance as requested.
- NationsBank / Bank of America executives travel to Hawaii for meeting with CDFI organizers, DHHL Chair and Governor.

On August 10, 1998, Cathy Bessant, President of NationsBank Community Development group and two other NationsBank executives arrived in Hawaii for meetings regarding Bank of America's commitments to the Hawaiian people. The bank executives first met with a large group of Hawaiian Kupuna at the Iolani Palace and then met with Gov. Ben Cayetano and representatives from the Hawaii Fair Lending Coalition. The bankers and coalition representatives also met with then DDHL Chair Kali Watson before traveling to Maui to tour Hawaiian Home Lands sites.

On August 17, 1998, the Federal Reserve Board announced its approval of the proposal of NationsBank to merge with Bank of America. The Board's approval was again specifically conditioned on compliance with all the commitments made in connection with the application, including Bank of America's \$150 million commitment to native Hawaiians - the only specific "CRA-related" commitment mentioned in the entire Federal Reserve order approving the merger.

Finally, on October 3, 2007 – more than nine years after the deadline by which Bank of America was required to fulfill its commitment – Ben Henderson, Deputy to DHHL Chair Micah Kane, wrote a letter to Bank of America claiming that "the \$150,000,000 commitment has been met by Bank of America."

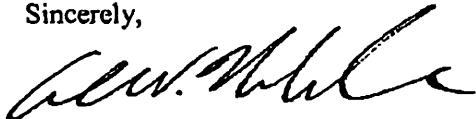
After reviewing this letter and related documents, the Hawaiian Homes Commission reached the following conclusions:

- a. That the Deputy to the Chair "signed off" on the commitment without approval of the Hawaiian Homes Commission;
- b. That the expansion of the scope of the commitment which allowed BankAmerica to claim a credit of \$3 and \$4 for every dollar they invested in infrastructure - thereby reducing their balance at a faster rate - was not brought before the Commission; and
- c. That no "late fee" - such as was agreed to in 1998 - was charged to BankAmerica for being nine years late in fulfilling its \$150 million commitment

Last month, in a unanimous vote, the Hawaiian Homes Commission agreed to support the Hawaii Fair Lending Coalition in its efforts to negotiate with Bank of America on behalf of our beneficiaries in order to achieve a formal settlement so that BofA's \$150 million commitment can finally be fulfilled.

Next month we will mark 14 years since the deadline passed for Bank of America to complete its \$150 million commitment to the beneficiaries of Hawaiian Home Lands as ordered by the Federal Reserve Board. The time for resolution of this matter is now. The Department of Hawaiian Home Lands stands ready to assist the Hawaii Fair Lending Coalition as it works with Bank of America to achieve a formal and final resolution.

Sincerely,



Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission