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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 21, 2019

Director of Council Services
Maria E. Zielinski

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OFFICE OF THE
COUNTY CLERK

The Honorable Kelly T. King
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair King:

SUBJECT: RELATING TO THE UNITED STATES FEDERAL RESERVE SYSTEM ORDER REQUIRING BANK OF AMERICA TO PROVIDE MORTGAGES ON HAWAIIAN HOME LANDS.

May I request the matter relating to the United States Federal Reserve System's order requiring the Bank of America to provide mortgages on Hawaiian Home Lands be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Molina".

MICHAEL J. MOLINA
Councilmember

P:CM:MHP:BofA_HawaiianHomeLands:grs

Enclosure

cc: Ian and Shay Chan Hodges

COUNTY COMMUNICATION NO. 19-107

\$150 Million Promise Broken

The Story of Bank of America's Kuleana in Hawaii

Relevant Organizations and Entities:

- ✓ **Nā Po`e Kokua (NPK)** –NPK has served as the fiscal sponsor and institutional home of the Hawaii Fair Lending Coalition (HFLC) since 1993.
- ✓ **Hawaii Fair Lending Coalition (HFLC)** - HFLC is a coalition of native Hawaiian housing advocates formed to address fair lending violations and community reinvestment among Hawaiians, Filipinos and others in Hawaii.
- ✓ **Federal Reserve**
- ✓ **Office of Thrift Supervision** [Effective July 21, 2011, the Office of Thrift Supervision (OTS) merged with the Office of the Comptroller of the Currency (OCC).]
- ✓ **Bank of America**
- ✓ **NationsBank**

Timeline:

- In 1993, Nā Po`e Kōkua (NPK) formed the Hawaii Fair Lending Coalition (HFLC) and began researching how banks in Hawaii were treating native Hawaiians. Among its findings, HFLC discovered that Bank of America (BofA) was discriminating in its lending practices by not providing mortgages on Hawaiian Home Lands.
- As a result of HFLC efforts, in May 1994, as a condition of its approval of BofA's acquisition of Liberty Bank in Hawaii, the Federal Reserve ordered Bank of America to make \$150 million in **FHA-247 insured mortgages** on Hawaiian Home Lands by 1998. The Federal Reserve also ordered BofA to provide \$30 million in below market financing to low-income families on Kauai by 1996 (due to Hurricane Iniki).
- By the 1998 deadline, BofA had provided only \$3,109,502 of the \$150 million in FHA-247 mortgages ordered by the Federal Reserve. None of the \$30 million in financing was provided on Kauai.
- In 1998, in response to HFLC challenging a merger between NationsBank and Bank of America, BofA recommitted to fulfilling its \$150 million loan commitment to native Hawaiians and agreed to pay a \$4.5 million late fee (including support for a Native Hawaiian Bank) based on the opportunity cost of its failure to fulfill its commitment. The executive responsible for this commitment was Cathy Bessant, then in charge of Community Development. Cathy is now BofA's Chief Operations and Technology Officer and was ranked in 2017 as the most powerful woman banker in the U.S.
- From 1998 to 2000, Na Po`e Kokua and community members worked to create a Native Hawaiian Community Development Financial Institution (CDFI) or "Hawaiian Bank", with the support of BofA funding and technical assistance. Due to a variety of issues, including lack of funding, the Hawaiian Bank was not created. However, NPK began serving as an incubator for Hawaiian Community Assets (HCA) to build economic self-sufficiency through housing counseling and community lending. HCA is certified by the U.S. Treasury as a Native CDFI. Though BofA has worked with HCA, only a small portion of the \$4.5 million late fee was ultimately paid.
- In 2003, in light of a proposed merger between Fleet Boston and BofA, the Department of Hawaiian Home Lands reported that BofA still had not fulfilled its

\$150 million commitment. HFLC challenged the Fleet Boston/BofA Merger based on the unfulfilled commitment and financial conflicts of interest concerns regarding a key regulator at the Federal Reserve Bank who was overseeing the merger.

- In February 2004, Hawaiian Homes beneficiaries sued the Federal Reserve in Momi Halli, et al., versus Alan Greenspan, et al. for failing to enforce the \$150 million commitment. U.S. District Judge David Ezra dismissed the case for lack of jurisdiction, but stated during court proceedings that, **“the record is clear Bank of America made commitments that have not been kept.”** He further told the Federal Reserve’s counsel: **“You say the board is impotent. I say the board made itself impotent. The board should say ‘If you don’t honor your commitment, we won’t approve your merger.’”**
- From 2005 to 2007, NPK/HFLC challenged several Bank of America regulatory applications, including mergers. The challenges resulted in nearly every Federal Reserve order related to a BofA acquisition referencing the Hawaiian commitment.
- In March 2007, Bank of America wrote to the Deputy to the DHHL chair claiming that the \$150 million Hawaiian commitment had been fulfilled although BofA provided no documented evidence to that effect.
- In April, 2007: Bank of America announced that it was seeking to acquire Chicago, Illinois based LaSalle Bank for \$21 billion. NPK/HFLC protested the acquisition with the Federal Reserve citing the failure of BofA to fulfill its \$150 million Hawaiian commitment.
- **In 2012, the Hawaiian Homes Commission confirmed that the Bank of America commitment still remained unfulfilled, and expressed support for HFLC’s consistent and ongoing efforts to hold Bank of America accountable.**
- Referencing the Hawaiian Homes Commission letter, on **April 18, 2018, Governor Ige invited BofA’s Cathy Bessant to come back to Hawaii “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.”
- Since April, the Governor’s administration has continued to pursue a resolution, including filing a Freedom of Information Act (FOIA) request with the Federal Reserve. The community has filed other FOIAs and HFLC is in the process of challenging BofA’s applications to open additional bank branches in the Midwest.
- **According to information provided by the US Department of Housing and Urban Development (HUD) in response to a FOIA request, BofA originated \$13,092,314 in loans on Hawaiian Homelands from 1994- 2012, and has made no FHA-247 loans since. Hawaiian Community Assets, which worked with BofA through 2011, originated \$45,225,258 in FHA-247 loans.**

Preliminary Late Fee Based on Lost Opportunity Costs

Based on updated information from the US Department of Housing and Urban Development (HUD), acquired recently through a FOIA request, the average FHA-247 loan originated during

the 1994 to 1998 period was **\$103,328**.¹ Had Bank of America provided the full \$150 million in loans in those four years as ordered by the Federal Reserve in 1994, some **1,452 families** would have been homeowners for the last 20-24 years and reaped the financial benefits thereof. Because Bank of America failed to provide at least \$92 million in loans as ordered², based on the \$103,328 average mortgage, **890 families were deprived of loans. To provide mortgages of an equivalent value to 1,452 families today would require \$227.8 million.**

HFLC is currently making preliminary calculations for the late fee owed by Bank of America based on lost opportunity costs for these 890 families who never received mortgages (we expect the final number of families to be higher). Initial estimates are based on:

- Amount of principle on the mortgages that would have been paid by each of these families - impacting the amount of equity they would have built up over the last 20 years (in lieu of rent) would be \$42,391 as of Aug 2018: **\$37.7 million for 890 families**³.
- Rent saved over the last 20 years. Not only would these 890 families be paying mortgages instead of rent, thereby paying off their loans and building equity in a booming housing market, they would have avoided paying skyrocketing rents. Based on an average 30-year fixed mortgage rate of 7.732% for a \$103,328 loan, the monthly payment would be \$738.97⁴. Paying an affordable mortgage rather than \$1,427 monthly — the average HUD fair market rent for a 2 bedroom in Honolulu for the last 20 years⁵ — would have saved each family \$165,127: **\$147 million for 890 families.**
- Home value increases. In 2018, the average mortgage for a Hawaiian Home loan is \$255,973, an increase of 247.7% over the 1994-1998 average mortgage of \$103,328⁶. Thus, these 890 families would have seen an increase in value of \$152,645 per home over the last 20 years: **\$135.9 million total for 890 families.**
- Families who did receive mortgage loans from Bank of America after 1998 received them over a 13-year period and thus also experienced opportunity costs related to building equity, increasing home values, and rental savings: at least **\$40 million.**

Thus, the minimum late fee owed by Bank of America to native Hawaiian families in Hawaii – in addition to **\$227.8 million in 2018 dollars to complete the \$150 million loan commitment – is \$360.6 million.** Additionally, for the \$30 commitment on Kauai, BofA owes **\$81.5 million in mortgages and \$72.7 million** in lost opportunity costs. Furthermore, the extraordinary lack of affordability of the current housing and rental markets means that these opportunity costs increase significantly for each month that Bank of America ignores its obligations.

¹ HUD report: 1994 average FHA-247 mortgage: \$79,832.95, 1995: \$92,366.13, 1996: \$116,025.14, 1997: \$103,451.69, 1998: \$98,432.36.

² HUD report: From 1994-2018, Bank of America originated \$13,092,314; Hawaiian Community Assets brokered \$45,225,259 in FHA-247 mortgages with a to-be-determined portion of the funding provided by Bank of America, leaving a minimum of \$91,682,427 outstanding.

³ Based on 7.732% 30-year fixed mortgage rate.

⁴ Standard amortization calculation for a 30 year mortgage \$103,332 with equal monthly payments at 7.732% interest.

⁵ <https://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-CITY-COUNTY-OF-HONOLULU.pdf> (p. 36) and HUD data

⁶ HUD report cited above.