

## GET Committee

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**From:** Mike J. Molina  
**Sent:** Monday, August 05, 2019 3:24 PM  
**To:** GET Committee  
**Cc:** Maria C. Ornellas; Stacy N. Takahashi; Shelly K. Espeleta; Gary.Saldana@mauicounty.us  
**Subject:** FW: Maui County Council Review of BofA Commitment to provide mortgages for native Hawaiians  
**Attachments:** BoA-Letter to Chair Molina & Members of the Governance, Ethics and Transparency Committee.PDF

Please transmit attached testimony to GET item 19.  
Mike

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**From:** Ivan Lui-Kwan <iluikwan@starnlaw.com>  
**Sent:** Monday, August 05, 2019 3:20 PM  
**To:** Mike J. Molina <Mike.Molina@mauicounty.us>  
**Cc:** Shelly K. Espeleta <Shelly.Espeleta@mauicounty.us>; Gary.Saldana@mauicounty.us  
**Subject:** RE: Maui County Council Review of BofA Commitment to provide mortgages for native Hawaiians

Aloha Councilmember Molina,

I will be in attendance at the referenced meeting on August 6 to represent Bank of America (BoA) with respect to the matter of the \$150 million commitment.

Please find attached my written testimony with respect to the proposed Resolution Encouraging The State Attorney General To Employ Outside Counsel to Pursue Legal Remedies For Fraudulent Bank Activity.

I will not be providing testimony with respect to the proposed Resolution Authorizing The Employment Of Special Counsel To Pursue Sanctions And Other Remedies For Fraudulent Foreclosures for the following reasons: (1) I have no information on the subject matter of the proposed resolution; (2) the content of the proposed resolution does not provide BoA with sufficient specific information to enable it to effectively respond to the proposed resolution; (3) items (1) and (2) are exacerbated by the shortness of time to respond.

Mahalo nui for your kind invitation.

Aloha,  
Ivan M. Lui-Kwan

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**From:** Mike J. Molina <[Mike.Molina@mauicounty.us](mailto:Mike.Molina@mauicounty.us)>  
**Sent:** Friday, August 02, 2019 1:27 PM  
**To:** Ivan Lui-Kwan <[iluikwan@starnlaw.com](mailto:iluikwan@starnlaw.com)>  
**Cc:** Shelly K. Espeleta <[Shelly.Espeleta@mauicounty.us](mailto:Shelly.Espeleta@mauicounty.us)>; Gary.Saldana@mauicounty.us  
**Subject:** Maui County Council Review of BofA Commitment to provide mortgages for native Hawaiians

Per our discussion, I would respectfully request your consideration for participation in the attached meeting, Tuesday, August 6, 2019 in the Maui County Council Chamber at 9 a.m.

The Maui County Council's Governance, Ethics and Transparency Committee will have representation from DHHL and Na Poe Kokua at the meeting.

To receive a balanced discussion on the matter we would respectfully request representation at the meeting from BofA.

Thank you for your consideration of my request.

Mike Molina

MICHAEL J. MOLINA, COUNCILMEMBER

Makawao, Haiku, Paia Council District

County of Maui

Wailuku, Hawaii

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# STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

August 5, 2019

The Honorable Michael J. Molina, Chair  
Members of the Committee  
Governance, Ethics, and Transparency Committee  
Council of The County of Maui  
Kalana O Maui Building, 8<sup>th</sup> Floor  
200 South High Street  
Wailuku, Hawaii 96793

Re: Bank of America's Commitment to Provide Mortgages for Native  
Hawaiians on Hawaiian Home Lands (GET-19)

Aloha Chair Molina and Committee Members:

I represent the Bank of America ("BoA") in Hawaii. Please allow me to provide you with information regarding the above-referenced agenda item. The attached information shows the following:

1. Correspondence acknowledging agreement among the BoA, the Department of Hawaiian Home Lands ("DHHL"), and the Federal Reserve Bank of Richmond as follows:
  - a. Modification of the BoA's lending commitment to allow other initiatives besides residential mortgage loans to be counted towards BoA's \$150 million commitment.
  - b. As of November 6, 2003, the parties agreed that \$69,391,573 will be counted towards BoA's \$150 million commitment, and leaving \$80,608,327 as the outstanding amount of the commitment to be fulfilled.
  - c. Establishment of a going-forward working relationship structure with DHHL for BoA to satisfy the remaining \$80,608,327 of BoA's \$150 million commitment.
2. Correspondence with a report dated July 20, 2007 from BoA to DHHL summarizing loans, grants and investments that BoA's \$150 million commitment has been satisfied.
3. Letter from DHHL dated October 3, 2007 and signed by Ben Henderson, Deputy to the Chairman, on DHHL letterhead stationery acknowledging that BoA's \$150 million commitment has been satisfied.
4. March 6, 2019 letter from Hawaiian community Assets to the National Community Reinvestment Coalition which synergizes with the documentation that shows that BoA's \$150 million commitment has been satisfied.

Pacific Guardian Center, Makai Tower • 733 Bishop Street, Suite 1900 • Honolulu, Hawaii 96813  
Telephone: (808) 537-6100 • Fax: (808) 537-5434 • Web: [www.starnlaw.com](http://www.starnlaw.com)

The Honorable Michael J. Molina, Chair  
Members of the Committee  
Governance, Ethics, and Transparency Committee  
Council of The County of Maui  
August 5, 2019  
Page 2

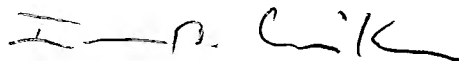
5. Summary of the *Burmeister v. County of Kaua'i* case which supports the legal conclusion that Ben Henderson, Deputy to the Chairman, in the October 3, 2007 DHHL letter to BoA had legal authority to bind DHHL with the acknowledgement that BoA's \$150 million commitment had been satisfied.

BoA Has Provided to Governor David Ige Documentation that BoA's \$150 Million Commitment Has Been Met.

- a. Officials of BoA met with Governor Ige in his office in the State Capitol on January 25, 2019, and in Washington D.C. on February 22, 2019 regarding the \$150 million commitment.
- b. The purpose of BoA's referenced meetings with Governor Ige was to provide the Governor with documentation to substantiate BoA's fulfillment of its \$150 million commitment.
- c. BoA did provide to Governor Ige documentation which substantiated that the \$150 million commitment has been met by BoA.

Mahalo nui for considering the position of BoA.

Aloha,



Ivan M. Lui-Kwan

Enclosures: Color Code References to Correspondence among DHHL, BoA, and the Federal Reserve Bank of Richmond  
December 15, 2003 Letter from DHHL to Federal Reserve Bank of Richmond  
December 15, 2003 Letter from BoA to DHHL  
March 16, 2007 Letter from BoA to DHHL with report dated July 20, 2007 Summarizing Loans, Grant, and Investments that BoA's \$150 million commitment has Been Satisfied  
October 3, 2007 Letter from DHHL to BoA stating: "The Department of Hawaiian Home Lands (DHHL) is therefore pleased to formally acknowledge that the \$150,000,000 commitment has been met by Bank of America."  
March 6, 2019 Hawaiian Community Assets Letter  
*Burmeister* Case

Color Code References to Correspondence among DHHL, Bank of America, and the Federal Reserve Bank of Richmond

BoA and DHHL agreed to modification of BoA's lending commitment to allow other initiatives besides residential mortgage loans to be counted toward BoA's \$150 million commitment.

As of November 6, 2003, BoA and DHHL agreed that \$69,391,573 will be counted toward BoA's \$150 million commitment and leaving \$80,608,327 as the outstanding amount of the commitment to be fulfilled.

Establishment of a going-forward relationship structure with DHHL for BoA to satisfy the remaining \$80,608,327 of BoA's \$150 million commitment

Reference to Ben Henderson as a major participant in the process

"The Department of Hawaiian Home Lands (DHHL) is therefore pleased to formally acknowledge that the \$150,000,000 commitment has been met by Bank of America."

December 15, 2003 Letter from DHHL  
to Federal Reserve Bank of Richmond

LINDA LINGIE  
COMPTROLLER  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. BOX 1073  
HONOLULU, HAWAII 96805

MICAH A. KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
IAN HENDERSON  
DEPUTY TO THE CHAIRMAN  
KAULANA ILI PARR  
EXECUTIVE ASSISTANT

BANKING SUPERVISION AND  
REGULATION DEPARTMENT

December 15, 2003

DEC 15 2003

FEDERAL RESERVE BANK  
OF RICHMOND

A. Linwood Gill, III  
Vice President  
Federal Reserve Bank of Richmond  
701 East Byrd Street  
Richmond, Virginia 23261-4528

Via telefacsimile to 804-697-4021;  
Hard-copy to follow.

Re: \$150 Million Commitment in Support of Native Hawaiian Housing

Dear Mr. Gill:

The Hawaiian Homes Commission ("Commission") requests your consideration of the comments below in connection with the proposed merger of FleetBoston Financial Corporation with and into Bank of America Corporation ("BoA") with BoA being the surviving corporation. The Commission is requesting that any order approving the merger include a specific directive to BoA to completely fulfill the \$150 million lending commitment first established in 1994, and to comply with certain steps articulated in this letter.

**Background on the Commission.**

The mission of the Commission is to manage the Hawaiian Home Lands trust effectively, and to develop and deliver lands to native Hawaiians. The trust is unique in part because it was established by Congress pursuant to the Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (July 9, 1921).<sup>1</sup>

<sup>1</sup> As currently stated, the purpose of the Hawaiian Homes Commission Act is as follows:

(a) The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.

(b) The principal purposes of this Act include but are not limited to:



A. Linwood Gill, III

December 15, 2003

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The policies and initiatives of the Commission are implemented by the Department of Hawaiian Home Lands ("DHHL"). The DHHL also provides administrative and operational support to the Commission.

The undersigned chairman of the Commission serves as the director of the Department of Hawaiian Home Lands ("DHHL"), and is in charge of the day-to-day administration and operation of the DHHL.

**Brief History of the \$150 Million Lending Commitment.**

In 1994, BoA sought regulatory approval to acquire Liberty Bank, Honolulu, Hawaii. The order issued by the Board of Governors of the Federal Reserve Board ("FRB") approving the acquisition, effective May 31, 1994, referenced the \$150 million lending commitment as follows:

- (1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;
- (2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and assuring long-term tenancy to beneficiaries of this Act and their successors;
- (3) Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity;
- (4) Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible; and
- (5) Providing financial support and technical assistance to native Hawaiian beneficiaries of this Act so that by pursuing strategies to enhance economic self-sufficiency and promote community-based development, the traditions, culture and quality of life of native Hawaiians shall be forever self-sustaining.

(c) In recognition of the solemn trust created by this Act, and the historical government to government relationship between the United States and Kingdom of Hawaii, the United States and the State of Hawaii hereby acknowledge the trust established under this Act and affirm their fiduciary duty to faithfully administer the provisions of this Act on behalf of the native Hawaiian beneficiaries of the Act.

- (d) Nothing in this Act shall be construed to:
  - (1) Affect the rights of the descendants of the indigenous citizens of the Kingdom of Hawaii to seek redress of any wrongful activities associated with the overthrow of the Kingdom of Hawaii; or
  - (2) Alter the obligations of the United States and the State of Hawaii to carry out their public trust responsibilities under section 5 of the Admission Act to native Hawaiians and other descendants of the indigenous citizens of the Kingdom of Hawaii.



A. Linwood Gill, III  
December 15, 2003  
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Bank of America FSB recently 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 (sic). (Emphasis added.)

This \$150 million lending commitment ("Lending Commitment") played a significant role in facilitating the favorable consideration of the acquisition of Liberty Bank:

As discussed in this order, BankAmerica plans to increase its CRA-related lending in Hawaii. The Board believes that these plans, when viewed in the context of the outstanding or satisfactory performance ratings for BankAmerica's subsidiary banks, support approval of this application.

Order at pp. 21-22.

During the period after May 31, 1994 until 1997, efforts were expended by BoA and DHHL to realize the full potential of the Lending Commitment. Without repeating all the efforts, and recounting the fits and starts, suffice it to say that the fulfillment of the Lending Commitment fell short of the expectations of both DHHL and BoA.

As a result, to facilitate its fulfillment, BoA and DHHL agreed to a modification of the Lending Commitment to allow other initiatives besides residential mortgage loans to be counted towards the \$150 million amount. These initiatives included matters such as the provision of construction loans to DHHL at below market terms, sponsorship of and assistance to DHHL in connection with securing housing grants, and fostering the participation of persons in BoA's Leadership Academy.

Despite the addition of these initiatives, the Lending Commitment was not completely fulfilled within the four-year period. The Lending Commitment did not expire as a result. Rather, the Lending Commitment was renewed in connection with the effort of NationsBank Corporation to merge with BankAmerica Corporation. In the order approving the merger, effective August 17, 1998, the FRB specifically noted that New BankAmerica would honor all outstanding CRA commitments, including the \$150 million commitment:

NationsBank also has stated that New BankAmerica would honor all of the outstanding CRA commitments that NationsBank and BankAmerica have with states and community groups, including BankAmerica's commitment to provide \$40 million in annual charitable contributions and to provide \$150 million in loans in Hawaii. (Emphasis added.)

NationsBank Order at p. 62.

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To date, despite the passage of almost 10 years since the Lending Commitment was first established, BoA has fulfilled less than 50% of the commitment, leaving just over \$80 million remaining unfulfilled.<sup>2</sup>

#### Relief Requested.

A bank's fulfillment of a CRA lending commitment should not be lightly set aside, nor should disregard or even avoidance of such a commitment by a bank be condoned.<sup>3</sup>

Given the lengthy passage of time since the Lending Commitment was originally established, and the level of non-performance on the commitment to date, the Commission requests that any order approving the proposed merger include a specific directive to BoA to completely fulfill the \$150 million lending.

The Commission believes that on a going-forward basis, fulfillment of the Lending Commitment will best be accomplished by establishing a direct working relationship between DHHL and BoA. Accordingly, the Commission further requests that any order approving the proposed merger include a specific directive to BoA to comply with the following steps:

1. BoA shall assign a Senior Client Manager who will act as its primary contact point for DHHL as well a resource in the assessment of business opportunities by DHHL.
2. DHHL shall designate staff personnel to serve as its primary contact point

<sup>2</sup> In a meeting between DHHL and BoA held on November 6, 2003, BoA agreed that only \$69,391,673 will be counted towards the \$150 million commitment, thereby leaving \$80,608,327 as the outstanding amount of the commitment to be fulfilled.

<sup>3</sup> In its 1994 order approving the acquisition of Liberty Bank by BoA, the FRB apprised BoA of its expectation that BoA will fully implement its CRA initiatives:

The Board expects Bank of America FSB to fully implement its CRA initiatives and to continue to improve its CRA performance, including its house-renting lending, in all of its delineated communities, and to address the issues raised by the OTS in its most recent CRA performance examination. The Board will continue to monitor implementation by Bank of America FSB of an effective CRA program in Hawaii, and will take this review into account in future applications to establish a depository facility. In this regard, the Board requires as a condition of its action in this case, that BankAmerica submit to the Federal Reserve Bank of San Francisco copies of any reports submitted to the OTS in connection with Bank of America FSB's CRA performance, including the results of its lending programs and initiatives and its progress in increasing the levels of its lending to low- and moderate-income and minority individuals and communities.

Order at pp. 22-23.



A. Linwood Gill, III  
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for BoA. The staff personnel will be knowledgeable as regards DHHL's proposed initiatives, including but not limited to matters relating to project financing requirements, and residential mortgage lending requirements.

3. BoA's Senior Client Manager and the DHHL's staff personnel shall engage in discussions on as frequent a basis as possible to facilitate BoA's fulfillment of the Lending Commitment. These discussions shall include but not be limited to:

- (i) Identifying, discussing, and exploring new opportunities to facilitate BoA's fulfillment of the Lending Commitment;
- (ii) Implementation of or the status of pending projects in which BoA is a participant; and
- (iii) Exploration of alternative measures that DHHL may propose to facilitate the ability of BoA to fulfill the Lending Commitment, such as implementing terms and conditions on lending opportunities which are advantageous to DHHL, or even measures to accelerate BoA's fulfillment of the Lending Commitment.

4. BoA shall give favorable consideration to any reasonable and appropriate financing opportunity to facilitate its fulfillment of the Lending Commitment. In this regard, to immediately move forward, BoA shall contact DHHL to schedule a meeting to discuss possible financing opportunities in support of native Hawaiian housing, related performance benchmarks, and other appropriate matters.

Thank you in advance for your favorable consideration of this letter. Should you have any questions, please do not hesitate to contact me immediately.

Very truly yours,



Micah Kane, Chairman  
Hawaiian Homes Commission

December 15, 2003 Letter from BoA to  
DHHL

**Bank of America**

Douglas B. Woodruff  
President  
Community Development Banking

December 15, 2003

Bank of America  
MD1-800-13-23  
600 Market Street  
St. Louis, MO 63101-3506

Tel 314.466.5170  
Fax 314.466.1919

Mr. Micah A. Kane, Chairman  
Hawaiian Homes Commission  
P.O. Box 1879  
1099 Alakea Street, Suite 2000  
Honolulu, Hawaii 96805-1879

Dear Micah:

Re: \$150 Million Commitment in Support of Native Hawaiian Housing

It was a pleasure meeting with you, Ben Henderson, and Kaulana Park in Honolulu. As we discussed, the purpose[s] of sending this letter to you are: (1) to confirm that Bank of America will fulfill its CRA-related lending commitment referred to in the Order issued by the Board of Governors of the Federal Reserve Board, effective May 31, 1994, in connection with Bank of America's request for approval to acquire Liberty Bank, Honolulu, Hawaii, as well as in subsequent correspondence, and (2) to set forth an action plan to facilitate the fulfillment of this commitment.

From Bank of America's perspective, it has provided over \$121 million in financing commitments, technical assistance, and grants in support of affordable housing benefiting native Hawaiians from the time of its original commitment in 1994 up to December 31, 2002. However, this letter will serve to confirm that Bank of America has agreed that only \$69,391,673 will be counted towards the \$150 million commitment as set out in the June 27, 2003 letter from Ben Henderson, thereby leaving \$80,608,327 as the outstanding amount of the commitment to be fulfilled ("Lending Commitment").

I would like to hereby affirm BoA's intent to continue to finance, support and promote safe and affordable housing for native Hawaiians, and further affirm that Bank of America will fulfill the Lending Commitment. Bank of America agrees that its efforts to fulfill the Lending Commitment will not be adversely affected or impaired if the proposed merger between Bank of America and FleetBoston Financial Corporation ("FleetBoston") is consummated. Furthermore, Bank of America has no objection in having the Federal Reserve Board include the Lending Commitment as outlined in this letter to any order approving the proposed merger between Bank of America and FleetBoston.

As you know, I believe that on a going-forward basis, fulfillment of the Lending Commitment can best be accomplished by working closely with you and your department. I am therefore pleased that both DHHL and Bank of America agree that fulfillment of the Lending Commitment will require fostering a direct working relationship between the entities. Thus, we





have mutually agreed to take the following steps:

1. We will assign a Senior Client Manager who will act as Bank of America's primary contact point for DHHL as well a resource in the assessment of business opportunities by DHHL. A new contact point will be designated by Bank of America or its successor should the assigned Senior Client Manager be affected by the proposed merger between Bank of America and FleetBoston.

2. DHHL will designate staff personnel to serve as its primary contact point for Bank of America. The staff personnel will be knowledgeable as regards DHHL's proposed initiatives, including, but not limited to, matters relating to project financing requirements, and residential mortgage lending requirements.

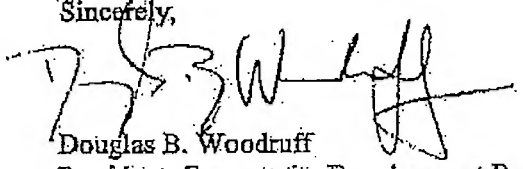
3. Our Senior Client Manager and the DHHL's staff personnel will engage in discussions on as frequent a basis as possible to facilitate Bank of America's fulfillment of the Lending Commitment. These discussions shall include but not be limited to: (i) identifying, discussing, and exploring new opportunities to facilitate Bank of America's fulfillment of the Lending Commitment, and (ii) the implementation of or the status of pending projects in which the bank is a participant. In addition, Bank of America specifically agrees that it shall engage in discussions on and explore alternative measures that DHHL may propose to facilitate the ability of Bank of America to fulfill the Lending Commitment, such as implementing terms and conditions on lending opportunities which are advantageous to DHHL, or other measures to accelerate the bank's fulfillment of the Lending Commitment.

As further assurance to DHHL, Bank of America shall give favorable consideration to any reasonable and appropriate financing opportunity which could facilitate its fulfillment of the Lending Commitment. In this regard, to immediately move forward, within three (3) weeks after this letter has been sent to you, I will contact you to schedule a meeting to discuss possible financing opportunities in support of native Hawaiian housing, related performance benchmarks, etc.

Finally, from time to time, Bank of America will continue to work with other native Hawaiian organizations where mutually beneficial opportunities arise. However, since it is DHHL who plays the vital and catalytic role in the creation of housing opportunities for native Hawaiians, please note that Bank of America's primary communication and dialogue on the fulfillment of the Lending Commitment will be with DHHL.

Again, thank you for meeting with us in helping to move the parties forward.

Sincerely,



Douglas B. Woodruff

President, Community Development Banking

cc: Tim Lui-Kwan, Esq.

March 16, 2007 Letter from BoA to  
DHHL with report dated July 20, 2007  
Summarizing Loans, Grant, and  
Investments that BoA's \$150 Million  
Commitment has Been Satisfied



Bank of America.



James W. Feild  
Senior Vice President  
Community Development Banking

Bank of America  
TX1-492-18-03  
901, Main Street, 18th Floor  
Dallas, TX 75202

Tel 214.209.0362  
Fax 214.209.3840

March 16, 2007 (July 23, 2007)

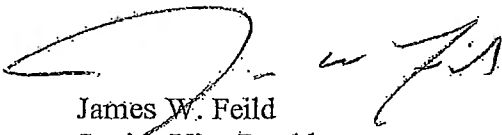
Mr. Ben Henderson  
State of Hawaii  
Department of Hawaiian Homelands  
1099 Alakea Street, Suite 2000  
Honolulu, Hawaii 96805-1879

Dear Ben:

As you are aware, Bank of America has worked diligently for more than 13 years to achieve our goal of lending or investing \$150,000,000 to help native Hawaiian families reach their dream of home ownership on native soil. We are proud to report that we have surpassed our goal with the help of the Department of Hawaiian Homelands and many individuals and organizations involved in native Hawaiian issues. The attached report summarizes the loans, grants and investments that make up our \$151,720,630 in production to date. Please review the attached report and indicate your agreement or contact me with any questions.

It has been a pleasure working with you and your staff. As we discussed earlier this year, Bank of America has also developed client relationships with developers that intend to build more homes on trust lands for native Hawaiian families. Even though we have met our formal goals, we hope to continue to serve these clients. I hope our efforts to serve our clients also help the Department of Hawaiian Homelands achieve your goals.

Sincerely,



James W. Feild  
Senior Vice President

cc: Micah Kane  
Ximena Delgado  
Ron Salgado

### Amounts Towards \$150 Million Hawaii Commitment

Information from DHHL	Amount of \$ Provided	Applied to DHHL Commitment**
Lai'opua/commitment letter	\$0	\$10,527,500
Waiehou Kou II/Construction & TO	\$11,716,534	\$11,716,534
Kopolei Rento to Own/Construction	\$10,607,639	\$10,607,639
FHLB AHP Grants	\$1,600,000	\$1,600,000
FHA 247 and Hula Mae Loans	\$31,600,000	\$31,600,000
Technical Training Sponsorship	\$40,000	\$40,000
CDFI for HCA (3:1) Ratio	\$250,000	\$750,000
Grants to HCA (4:1) Ratio	\$150,000	\$600,000
IDA Grant to OHA	\$150,000	\$150,000
HCA originated mortgages	\$1,800,000	\$1,800,000
<b>Total</b>	<b>\$57,914,173</b>	<b>\$69,391,673</b>

<b>2004 Activity by Bank of America</b>		
Waiehu Kou III Revolving Line of Credit	\$6,000,000	\$6,000,000
Waiehu Kou III, AHP (closed in 2003)		\$404,955
HCA Originated Mortgages Year-end 2004		\$7,177,350
HCA Warehouse Line of Credit		\$200,000
HCA grants paid in 2003, (4:1) ratio	\$100,000	\$400,000
Hawaii HomeOwnership Center, Paid 2003, (4:1) ratio	\$50,000	\$200,000
Hawaii HomeOwnership Center, Mortgages to DHHL families in 2003		\$1,246,466
Hawaii Community Assets grants paid in 2004, (4:1) Ratio	\$75,000	\$300,000
<b>Total since 2003 and Year-end 2004</b>	<b>\$6,225,000</b>	<b>\$15,928,771</b>

<b>2004 Actuals/Revised numbers</b>	<b>Actual Amount</b>	<b>Difference</b>
Waiehu Kou III Revolving Line of Credit Actual Draw down	\$9,362,156	\$3,362,156
HCA Originated mortgages 2004 (Revised amount)	\$7,343,013	\$165,663
	Difference	\$3,527,819
<b>Revised Grand total for 2004</b>		<b>\$19,456,590</b>

Note: A Letter to Chairman Kane detailing the Bank's activity was sent/dated 1/7/05. We need to follow up to make sure that the revisions to the numbers are included in the next communication.

<b>2005 HCA Originated Mortgages</b>		
HCA Originated mortgages Jan-March 2005		\$5,863,947
HCA Originated mortgages April-June 05		\$4,721,377
HCA Originated mortgages July-September 2005		\$4,285,991
HCA Originated mortgages October-December 2005		\$1,870,729
<b>Other Fundings in 2005</b>		
Hawaii HomeOwnership Center, Paid 2005, (4:1) ratio	\$75,000	\$300,000
HCA Paid 2005, (4:1) ratio	\$75,000	\$300,000
<b>2005 Activity</b>		<b>\$17,342,044</b>

\*\*On November 2003, DHHL and Bank representatives met and agreed that the Bank had made good on \$69,391,673 towards the \$150 Million Hawaii Commitment. Those totals are delineated above.  
Revised: 7/20/2007

<b>2006 Activity</b>		
Villages of Leial'i		\$14,586,216.00
Villages of Leial'i actual draw down	\$19,468,429	\$4,882,213.00
Hawaii HomeOwnership Center, Paid 2006, (4:1) ratio	\$50,000	\$200,000
HCA Paid 2006, (4:1) ratio	\$100,000	\$400,000
HCA Originated mortgages Jan-March 2006		\$1,633,456
HCA Originated mortgages April-June 2006		\$2,329,567
HCA Originated mortgages July-December 2006		\$7,800,000
Corrected # HCA Originated July-December 2006 (minus)		-\$2,094,023
HCA Original Warehouse Line of Credit forgiven (4:1) ratio	\$250,000	\$1,000,000
Waiehu Kou 4 Wailuku, HI (Dowling Co.) Revolving Line		\$10,500,000.00
	<b>2006 Activity</b>	<b>\$41,237,429</b>
<b>2007 Activity</b>		
HCA Grant Paid 2007, (4:1) ratio	\$25,000	\$100,000
HCA Originated mortgages Jan-March 2007		\$1,728,268
HCA Originated mortgages April-June 2007		\$2,464,626
	<b>2007 Activity</b>	<b>\$4,292,894</b>
	<b>Grand Total Towards Goal</b>	<b>\$151,720,630</b>
		101%

\*\*On November 2003, DHHL and Bank representatives met and agreed that the Bank had made good on \$69,391,673 towards the \$150 Million Hawaii Commitment. Those totals are delineated above.

Revised: 7/20/2007

October 3, 2007 Letter from DHHL to  
BoA Stating: “The Department of  
Hawaiian Home Lands (DHHL) is  
therefore pleased to formally  
acknowledge that the \$150,000,000  
commitment has been met by Bank of  
America.”

LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



MICAH A. KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

BEN HENDERSON  
DEPUTY TO THE CHAIRMAN

KAULANA H. PARK  
EXECUTIVE ASSISTANT

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOMELANDS

P.O. BOX 1879

HONOLULU, HAWAII 96805

October 3, 2007

Mr. James W. Feild  
Senior Vice President  
Community Development Banking  
Bank of America  
901 Main Street, 18th Floor  
Dallas, Texas 75202

Dear James:

I apologize for the delay in responding to you regarding Bank of America's (BoA) commitment to provide \$150,000,000 in lending or investment to help native Hawaiian families fulfill their goal of homeownership on Hawaiian home lands.

It has taken us time to review the revised summary report you provided dated July 20, 2007. The statement of BoA contributions toward fulfillment of its commitment appear to be in order. The Department of Home Lands (DHHL) is therefore pleased to formally acknowledge that the \$150,000,000 commitment has been met by Bank of America.

As you are aware, DHHL is continuing its efforts to provide affordable housing for our native Hawaiian families. As we move forward with our development program, we hope that BoA will continue to pursue home financing and mortgage lending opportunities on Hawaiian home lands.

Aloha and mahalo,

A handwritten signature in cursive script, appearing to read "Ben Henderson".

Ben Henderson, Deputy to the  
Chairman

March 6, 2019 Hawaiian Community  
Assets Letter





200 North Vineyard Boulevard, B140  
Honolulu, HI 96817  
Ph: 808-587-7886  
Toll Free: 1-866-400-1116  
[www.hawaiiancommunity.net](http://www.hawaiiancommunity.net)

March 6, 2019

National Community Reinvestment Coalition  
Attn: Jesse Van Tol  
740 15th Street, NW, Suite 400  
Washington, DC 20005

Aloha Mr. Van Tol,

We are writing in our capacity as Executive Director and President Emeritus of Hawaiian Community Assets (HCA) to provide factual information reflecting on activities undertaken by Bank of America to fulfill the \$150 million Hawaiian Home Lands lending commitment. This commitment was first made in connection with Bank of America's 1993 application to acquire Liberty Bank in Honolulu. 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," which included Bank of America's "commitment of \$150 million to the FHA 247 loan program." In addition, the \$150 million Hawaiian commitment was included as a requirement in the Federal Reserve Board's 1998 order approving the merger of BankAmerica and NationsBank Corporations.

#### **Organization Background**

HCA is a 501c3 nonprofit community development corporation that runs Hawaii's largest Department of Housing and Urban Development (HUD) approved housing counseling program and owns Hawaii Community Lending (HCL), a Department of Treasury certified community development financial institution that increases access to credit and capital for Native Hawaiians residing in Hawaii through its consumer loan product offerings. Together, HCA and HCL build the capacity of low- and moderate-income communities to achieve and sustain economic self-sufficiency with a particular focus on Native Hawaiians.

Since HCA's founding in 2000, we have served more than 18,000 individuals with free HUD housing counseling, assisted 5,811 Hawaii residents secure or sustain housing, and helped underserved Native Hawaiian communities access over \$140 million in capital for affordable housing through grants, loans, and mortgage financing. HCA is widely recognized for its continuum in HUD housing counseling agency that assists Native Hawaiian families obtain rentals and become homeowners on and off Hawaiian Home Lands, leads the new statewide housing affordability coalition funded by Kresge Foundation and Hawaii Community Foundation, and has established the Hawaii Emergency Loan Program with grants from Aloha United Way, State of Hawaii, and Rural Community Assistance Corporation.



HCA does not take a position on the overall status of the Bank of America lending commitment. However, HCA is in a position to provide information that reflects directly on activities that Bank of America has undertaken in conjunction with our organization toward fulfillment of the commitment.

#### **Bank of America Activities in Conjunction with HCA**

In August 2000, HCA approached Bank of America to determine whether the bank would be interested in capitalizing HCA's proposed mortgage broker arm, Hawaii Community Lending (HCL), to enable HCA to originate FHA 247 and other mortgage loans on Hawaiian Home Lands. In return for capitalizing the mortgage program, HCA proposed that Bank of America be entitled to count the loans for its credit against the \$150 million commitment. Bank of America expressed an interest, provided the Department of Hawaiian Home Lands (DHHL) approved the arrangement. Bank of America brought a partner investor, National Community Investment Fund (NCIF), to the table. In February 2001 DHHL approved the arrangement, in June both investors approved their investments, and in August a total of \$500,000 in long term debt at a 9% interest rate was provided to HCA as mortgage operating capital, half from Banc of America Community Development Corporation and half from NCIF. In addition, Bank of America pledged \$150,000 in grant support for HCA's training and counseling programs over the first 3 years.

While the initial investment of \$500,000 by Banc of America Community Development Corporation and NCIF was based on a business plan developed by the acting HCA Executive Director and former Bank of America executive, James Wagele, the mortgage brokerage venture was not as successful as planned. In 2003, Bank of America recognized the inability of HCA to meet its business plan projections and amended our loan agreement to delay, by one year, the beginning of principal payments. In addition, they committed to extend its support of the education and counseling programs at the same level (\$50,000 annually) for 2004 and provided an additional \$50,000 in operating capital during this same time period in the form of grants that provide the equivalent of equity capital rather than additional debt. It was the determination of Mr. Wagele along with HCL President and former Bank of America executive, Carl Cunningham, to use the \$500,000 in long term debt and \$50,000 in equity capital provided by Banc of America Community Development Corporation and NCIF for staff salaries instead of capital for relending.

In 2006, Mr. Wagele welcomed Bank of America to Hawaii and the Annual Native Hawaiian Convention to honor them for their grant support for training and technical assistance provided to HCA. The grant support made it possible for HCA to be handed over to a Native Hawaiian leader, Michelle Kauhane. Ms. Kauhane went on to lead HCA, by renegotiating the organization's debt with Banc of America Community Development Corporation from a 9% interest rate to 1% per annum, interest-only payments with a balloon payment due February 2017. This helped our organization dedicate its financial resources toward originating \$45 million in FHA 247 mortgage loans that were counted toward Bank of America's \$150 million Hawaiian Home Lands lending commitment.

In 2010, with the passing of the SAFE Act, HCA could no longer house HCL as its mortgage brokerage arm under its existing business structure. The mortgage brokerage arm had been producing 50% of the organization's annual revenue prior to the SAFE Act and served as the

main vehicle for not only fulfilling Bank of America's \$150 million Hawaiian Home Lands lending commitment but also for HCA's loan repayment to Banc of America Community Development Corporation. Shortly thereafter, in 2011, Ms. Kauhane was appointed Deputy Director of DHHL and Jeff Gilbreath was promoted from HCA Program Coordinator to Executive Director. With an inactive mortgage brokerage and \$235,926 in long term debt with Banc of America Community Development Corporation and NCIF still on its books, Mr. Gilbreath worked with the HCA Board to reposition HCL as a native CDFI providing consumer loans to the increased number of Native Hawaiians experiencing or at-risk of homelessness due to mortgage foreclosures.

By 2013, HCA had generated enough revenue to successfully pay off its debt to NCIF but still owed Banc of America Community Development Corporation \$150,000 from its original \$500,000 loan and \$50,000 equity investment. Our organization continued to make 1% interest-only payments per annum until February 2017 when the balloon payment was renegotiated by Mr. Gilbreath. The loan modification allows HCA to make \$1,500 in quarterly payments at 0% interest over a 25-year term. As of March 1, 2019, HCA still owes Banc of America Community Development Corporation \$134,662.05. HCA plans to re-establish HCL as a nonprofit mortgage brokerage by the end of 2019 after years of being inactive.

#### **HCA's Efforts to Date**

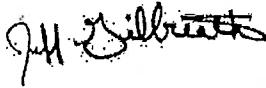
Despite the above situation, over the last 19 years, HCA has been recognized on the national stage as an innovative leader in culturally-relevant, place-based community development programming. In 2003 HCA's co-founders were recipients of the prestigious *Leadership for a Changing World* award, a partnership of the Ford Foundation, the Advocacy Institute, and the Robert S. Wagner Graduate School of Social Service at New York University. This award recognized extraordinary leadership in the field of social justice. 10 years later, in 2013, HCA was featured in the Federal Reserve Bank of San Francisco's *Community Investments* publication for its service delivery model as a "blueprint for building and sustaining Native Hawaiian economic self-sufficiency". In 2014, HCA received the *Where We Live Platforms for Prosperity Award* from then Corporation for Enterprise Development (now Prosperity NOW) for its creation of the nation's first renter individual development account. In 2016, HCA was highlighted in the National Coalition for Asian Pacific American Community Development's (National CAPACD) *Anti-Displacement Strategies Report* for its comprehensive approach to foreclosure prevention on Hawaiian Home Lands that included HUD housing counseling coupled with individual development accounts and emergency loans. Finally, in 2017, HCA was the subject of a case study in the *Foundations for the Future Report* and recognized as implementing best practices in culturally-relevant financial capability programming for native communities and communities of color nationwide. The report was developed by Brandeis University's Heller School Institute for Assets and Social Policy and has led to our organization offering capacity building training and technical assistance to other community development organizations interested in implementing "empowerment economics" programs across the country.

Today, HCA has effectively moved from its grassroots beginnings to a statewide organization serving 1500 households annually with HUD housing counseling, disbursing \$500,000 every year in match savings grants for first month's rent/deposit and down payment/closing costs, and managing a \$500,000 community loan fund dedicated to serving Native Hawaiians experiencing housing instability and unable to access the mainstream financial system. HCA is a member of

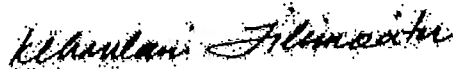
Rural Local Initiative Support Corporation, National CAPACD, Rural Community Assistance Corporation, Native CDFI Network, and Council for Native Hawaiian Advancement (CNHA). Its Executive Director is Board President of Hawaii Habitat for Humanity, a CDFI managing a \$3 million affordable housing fund, and its Deputy Director is Board Chair for National CAPACD and Treasurer of CNHA, Hawaii's largest community-based CDFI. Under HCL, HCA maintains a loan fund with a delinquency rate of less than 10% and a 0.5% default rate despite the fact that its loans are often made to individuals living in emergency shelters, in overcrowded and high-priced rental homes, or in-process of foreclosure.

We hope this information is useful in determining the level of Bank of America's activities attempting to fulfill its commitment here in Hawaii in conjunction with HCA. Please feel free to contact us directly at 808.587.7653 or [jeff@hawaiiancommunity.net](mailto:jeff@hawaiiancommunity.net) should you have any questions or need more information.

Sincerely,



Jeff Gilbreath  
Executive Director



Kehaulani Filimoeatu  
President Emeritus

cc. Brent Kakesako, Hawaii Alliance for Community-Based Economic Development

## *Burmeister Case*



*Burmeister v. County of Kaua'i,*  
2018 WL 2050131 (D. Hawai'i 2018)  
("Burmeister Case")

The Burmeister Case demonstrates that Mr. Ben Henderson had authority to acknowledge Bank of America's satisfaction of its \$150 Million Commitment on behalf of DHHL. The Burmeister Case is based on the legal principle of apparent authority, which Hawaii courts have held to be equally binding on government agencies. The Court in *Burmeister* explained:

Under Hawaii law, an agency relationship may be created through actual or apparent authority. To establish actual authority, there must be a manifestation by the principal to the agent that the agent may act..., and may be created by express agreement or implied from the conduct of the parties or surrounding circumstances. In comparison, apparent authority arises when the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he was purported to have. (*internal citations and quotations omitted*) *Id.* at 7.

In that case, the U.S. District Court, District of Hawaii, held that the Director of the Kaua'i Planning Department and the Deputy County Attorney had the apparent authority to enter into a settlement agreement on behalf of the County of Kaua'i. *See id.* The Court explicitly stated that the apparent authority of these two government agents was enough to uphold the agreement and examining whether they acted with actual authority was unnecessary as a result. *See id.* The Court considered the length of time spent negotiating the settlement agreement and the capacity in which the government agents signed the agreement as part of its analysis. *See id.*

In Ben Henderson's October 3, 2007 letter to BoA ("Acknowledgment Letter"), Mr. Henderson states, "The Department of Home Lands (DHHL) is therefore pleased to formally acknowledge that the \$150,000,000 commitment has been met by Bank of America." The Acknowledgment Letter was sent on official DHHL letterhead and was signed by Mr. Henderson in his official capacity as Deputy to the Chairman.

Given Mr. Henderson's involvement in the meetings and events leading up to delivery of the Acknowledgement Letter, as well as the Acknowledgement Letter's official format and manner of execution, BoA's belief and reliance on the conclusive statement acknowledging fulfillment of its \$150 Million Commitment is emphatically reasonable and as a result, under Hawaii law DHHL is bound by this acknowledgement.