

STATE OF HAWAI'I DEPARTMENT OF HAWAIIAN HOME LANDS

Hawaiian Homes Commission

March 20-21, 2023

B. REGULAR AGENDA Office of the Chairman

C-2

RECOMMENDED ACTION

Affirm the Hawaiian Homes Commission's 2012 delegation of authority to Nā Po'e Kōkua to hold Bank of America legally accountable for its \$150 million mortgage commitment.

DISCUSSION

Despite being urged by the Hawaiian Homes Commission, Hawaii's Governor, the Hawaii state senate and all four county councils to negotiate with " 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," Bank of America has thus far refused to do so.

On May 3, 2012, then Hawaiian Homes Commission Albert "Alapaki" Nahale-a, wrote to Nā Po'e Kōkua president and Hawaii Fair Lending Coalition member Kehaulani Filimoe'atu that "Last month [April 2012], 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."

On April 18, 2018, Governor Ige wrote to Catherine P. Bessant, Chief Operations and Technology Officer of Bank of America, to invite her to Hawai'i "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." Governor Ige offered to serve as host for these negotiations. The Governor attached Chairman Nahale-a's 2012 letter and strongly urged:

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 kupuna (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).

Gov. Ige also noted that:

- Those 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
- 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

On March 20, 2019, the Hawaii State Legislature’s Native Hawaiian Caucus and the Committee Chairs on Native Hawaiian Affairs wrote to Bank of America “Summoning Ms. Bessant to come before the Legislative Hawaiian Caucus to address the request by Governor David Ige that she meet with Nā Po’e Kōkua and the Hawaii Fair Lending Coalition to reach a fair and final settlement of the outstanding \$150 million Hawaiian Homes FHA-247 Commitment.”

The summons noted that:

According to information provided by the US Dept of Housing and Urban Development (HUD), Bank of American achieved only a tiny fraction of the \$150 million in FHA-247 loans that it committed to the Office of Thrift Supervision and the Federal Reserve Board that it would make by 1998: \$13,092.314 between 1994 and 2018.

Bank of America and Ms. Bessant ignored the summons from Hawaii’s legislature.

On September 4, 2019, City Council of Honolulu adopted Resolution 19-196, FD1, supporting the Governor’s efforts to intervene between Nā Po’e Kōkua, the Hawaii Fair Lending Coalition, and the Bank of America to reach a settlement agreement relating to a \$150 million loan commitment for native Hawaiians on Hawaiian Home Lands, now twenty years overdue; and

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.

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

BE IT FURTHER RESOLVED that it urges Catherine P. Bessant to return to Hawaii to meet with NPK/HFLC to reach a fair and final settlement, as invited by Governor David Ige; and

BE IT FURTHER RESOLVED that in addition to providing the mortgages on Hawaiian Home Lands as ordered by the Federal Reserve Board, BofA must address the estimated \$360.6 million in lost opportunity costs for native Hawaiians on Hawaiian Home Lands and a \$4.5 million late fee for failing to fulfill its required commitment.

The resolution further stated:

WHEREAS, in 1993, Nā Po'e Kōkua (NPK), an organization established to assist native Hawaiians with housing and related matters, formed the Hawaii Fair Lending Coalition (HFLC) and began researching how banks in Hawaii were treating native Hawaiians; and

WHEREAS, among its findings, HFLC discovered that Bank of America (BofA) was conducting discriminatory lending practices in the form of redlining, the practice of denying services to residents of certain areas based on the racial or ethnic composition of those areas, by not providing mortgages on Hawaiian Home Lands; and

WHEREAS, in May 1994, as a result of HFLC's efforts and as a condition of BofA's acquisition of Liberty Bank, the Federal Reserve Board and the Office of Thrift Supervision ordered BofA to make \$150 million in FHA-247 mortgages available on Hawaiian Home Lands by 1998; and

WHEREAS, by the 1998 deadline, BofA had provided only \$3,109,502 of the \$150 million in FHA-247 mortgages ordered by the Federal Reserve Board and the Office of Thrift Supervision; and

WHEREAS, in 1998, BofA recommitted to meet the \$150 million loan commitment to native Hawaiians and to pay a \$4.5 million late fee based on the lost opportunity cost of its failure to fulfill its required commitment; and

WHEREAS, the BofA executive responsible for this recommitment was Catherine P. Bessant, then in charge of Community Development, who traveled to Hawaii with other senior bank executives in August 1998 to meet with then-Governor Benjamin Cayetano, Hawaiian kupuna, and other community leaders from NPK/HFLC at Iolani Palace; and

WHEREAS, in January 2010, Catherine P. Bessant became chief operations and technology officer at BofA, just as the Federal Bureau of Investigation and federal regulators were investigating BofA and other big banks for the infamous "robo-signing scandal" involving the use of millions of false documents to mislead courts across the nation, resulting in a \$25 billion national mortgage settlement; and

WHEREAS, in April 2012, the State of Hawaii Attorney General, along with 48 other state attorneys general, forced BofA into the \$25 billion national mortgage settlement to

resolve the robo-signing scandal involving false evidence of legal standing to foreclose that was filed in foreclosures throughout the State of Hawaii and other judicial foreclosure states, including the State of Florida; and

WHEREAS, pursuant to the terms of the \$25 billion national mortgage settlement, the State of Hawaii received \$7,911,883; and

WHEREAS, in 2012, the Hawaiian Homes Commission unanimously confirmed that the BofA commitment remained unfulfilled, and expressed support for HFLC's consistent and ongoing efforts to hold BofA accountable; and

WHEREAS, from 1994 to 2012, BofA originated only \$13,092,314 in FHA-247 loans on Hawaiian Home Lands, and has made no FHA-247 loans since, according to information provided by the United States Department of Housing and Urban Development (HUD) on August 20, 2018, in response to a Freedom of Information Act ("FOIA") request; and

WHEREAS, based on HUD data and the assumption that BofA is given credit for FHA-247 loans originated by Hawaiian Community Assets, preliminary estimates of BofA's late fees to date are approximately \$391 million for lost opportunities for building equity, reaping the benefits of a booming housing market, and paying affordable mortgages rather than skyrocketing rents over the last twenty years for 890 native Hawaiian families who should have received Bank of America mortgages by 1998, but did not, and the families who did receive loans up to thirteen years after the deadline; and

WHEREAS, on April 18, 2018, Governor David Ige invited Catherine P. Bessant to return to Hawaii for a meeting with NPKIHFLC "to reach a fair and final settlement of BofA's outstanding \$150 million commitment to the Hawaiian people on their homelands"; and

WHEREAS, on July 16, 2018, Governor David Ige filed an FOIA request with the Board of Governors of the Federal Reserve System, seeking access to all records relating to BofA's commitment to provide \$30 million in below market financing to low income families residing in the County of Kauai by 1996 and BofA's commitment to provide \$150 million in FHA-247 mortgage loans by 1998; and

WHEREAS, on January 22, 2019, after months of delays, the Board of Governors of the Federal Reserve System granted Governor David Ige's FOIA request in part by providing 690 pages of documents, and denied the request in part by withholding numerous records, including records regarding BofA's acquisition of LaSalle Bank, which relate to BofA's \$150 million FHA-247 commitment to native Hawaiians; and

WHEREAS, on April 22, 2019, Governor David Ige appealed the Federal Reserve Board's denial and requested the release of the withheld records; and

WHEREAS, on November 2, 2018, the Council of the County of Maui adopted Resolution 18-178, entitled “SUPPORTING THE GOVERNOR’S EFFORTS TO INTERVENE BETWEEN NA POE KOKUA, THE HAWAII FAIR LENDING COALITION, AND THE BANK OF AMERICA TO REACH A SETTLEMENT AGREEMENT RELATING TO A \$150 MILLION LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS”; and

WHEREAS, on April 4, 2019, the Hawaii State Senate adopted Senate Concurrent Resolution 45, Senate Draft 1, entitled “SUPPORTING THE GOVERNOR’S EFFORTS IN INVESTIGATING AND URGING THE BANK OF AMERICA TO RETURN TO HAWAII TO MEET WITH NA POE KOKUA AND THE HAWAII FAIR LENDING COALITION REGARDING A \$150,000,000 LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS”; and

WHEREAS, on April 10, 2019, the Council of the County of Kauai adopted Resolution 2019-31 entitled “SUPPORTING THE GOVERNOR’S EFFORTS IN URGING THE BANK OF AMERICA TO RETURN TO HAWAII TO MEET WITH NA POE KOKUA AND THE HAWAII FAIR LENDING COALITION TO REACH A SETTLEMENT AGREEMENT RELATING TO \$150,000,000 LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS”; and

WHEREAS, on July 9, 2019, the Council of the County of Hawaii adopted Resolution 209-19, entitled “A RESOLUTION SUPPORTING THE EFFORTS OF GOVERNOR DAVID Y. IGE TO URGE THE BANK OF AMERICA TO RETURN TO HAWAII TO MEET WITH NA POE KOKUA AND THE HAWAII FAIR LENDING COALITION REGARDING A \$150,000,000 LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS”;