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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).¹

¹ 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:

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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.

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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.²

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.³

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

² In a meeting between DHHL and BoA held on November 4, 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.

³ In its 1994 order approving the acquisition of Liberty Bank by BoA, the FRB advised 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.

