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Bank of American Counsel Letter to the FCIC re the Community Reinvestment Act

Reginald J. Brown

Sarah Pfuhl

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August 20, 2010

Reginald J. Brown

VIA HAND DELIVERY

+1 202 663 6430(t)
+1 202 663 6363(f)
reginald.brown@wilmerhale.com

Victor Cunicelli
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006-4614

Re: April 21, 2010 Request for Information Regarding the Community Reinvestment Act

Dear Victor:

Our understanding is that you are interested in: (a) a description of the mortgages in the “CRA Portfolio” as that term is used in BAC’s 1Q2010 10-Q; (b) the dollar amount of the total non-performing CRA mortgages on the balance sheet divided by the total dollar amount of CRA mortgages on the balance sheet; and (c) information about how BAC defined “non-performing” loans.

The “CRA portfolio” consists of CRA-qualified mortgages that BAC kept on its balance sheet, and did not sell on the secondary market. The mortgages in the “CRA portfolio” consist of mortgages to LMI borrowers or to borrowers who lived in an LMI census tract, which are reported to the OCC for the purposes of the Bank’s CRA compliance assessment. The figures referencing the “CRA portfolio” were not intended to reflect mortgages originated pursuant to BAC’s publicly stated investment or lending goals, or any outstanding understandings with community groups. The mortgages in the “CRA portfolio” are a minority of the total CRA-qualified mortgages originated by BAC.

With respect to (b) above, please see the data provided below. Please note that this reflects only on balance sheet amounts, not any ‘held for sale’ loan categories.

In 1Q2010, the total CRA portfolio was approximately 7% of the total residential mortgage portfolio; the nonperforming CRA portfolio loans were approximately 18% of the total nonperforming residential mortgages. The nonperforming CRA loans were approximately 21% of the total CRA portfolio, and about 1.5% of the total residential mortgage portfolio.

<u>On Balance Sheet Residential Mortgage Portfolio</u>	<u>4Q2009</u>	<u>1Q2010</u>
Total Residential Mortgage Portfolio [End Balance] (excluding Purchased Credit Impaired and FHA Insured Loans)	\$218.147B	\$211.545B
Nonperforming Residential Mortgage Total	\$16.596B	\$17.763B
Net Credit Losses from Residential Mortgage Portfolio	\$1.233B	\$1.069B

<u>On Balance Sheet CRA Loans</u>	<u>4Q2009</u>	<u>1Q2010</u>
Total CRA Portfolio End Balance	\$14.591B	\$14.967B
Nonperforming CRA Loan Total	\$2.887B	\$3.138B
Net Credit Losses from CRA Portfolio	\$250.5M	\$279.8M

With respect to (c) above, BAC generally defines “non-performing loans” as those loans more than 90 days overdue. BAC defines “net credit losses” as the amount of write downs taken on held-for-investment loans during the period. BAC’s policy is to write down a real estate secured loan to its net realizable value (i.e., the outstanding balance of a real estate-secured loan that is in excess of the estimated property value, less cost to sell) no later than the end of the month in which the loan becomes 180 days past due unless repayment is 100% insured by the Federal Housing Administration.

With respect to what the NCRC described in its 2007 report as BAC’s “commitments” to community groups over the past 20 years, we believe that the NCRC is probably the best source for additional information.

* * * *

BAC’s response may contain confidential information, including highly sensitive and proprietary business, client, and supervisory information (collectively “Confidential

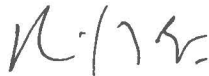
Information”). Federal securities law recognizes that the use or disclosure of non-public information may result in harm to public investors. Selective disclosures or selective releases of information regarding the timing of any future public disclosures may also result in harm to investors and violate federal securities laws. Accordingly, BAC respectfully requests that the Confidential Information be maintained confidentially by the FCIC and its staff. Neither this letter nor BAC’s providing information to the FCIC is intended to, and does not, waive any applicable privilege or other legal basis under which information may not be subject to production. If it were found that any of the information provided by BAC constitutes disclosure of such information, BAC does not intend to waive and has not waived any privilege or other protection.

BAC requests that the FCIC staff provide the undersigned with notice and an opportunity to be heard in the event the FCIC determines that it will disclose any Confidential Information to a third party. Such treatment would be consistent with the respect for sensitive and proprietary business information that Congress has shown in the past.

* * * *

Please call me at 202-663-6430 or Sarah Pfuhl at (212) 295-6305 if you have any questions.

Sincerely,



Reginald J. Brown

Sarah Pfuhl