



Consumer Financial  
Protection Bureau

1700 G Street NW, Washington, DC 20552

January 10, 2020

Kathy Cummings  
SVP; Homeownership Solutions and Strategic Relationships  
620 South Tryon Street  
Mail code: NC1-030-15-04  
Charlotte, NC 28202

Dear Ms. Cummings,

This letter is in response to an application for a No-Action Letter, filed with the Bureau of Consumer Financial Protection (Bureau) by Bank of America, N.A. in its capacity as a mortgage lender (Bank of America). In its application, Bank of America notes that the application is based on the No-Action Letter Template issued by the Bureau on September 10, 2019 (September 10 NAL Template), in response to an application from the United States Department of Housing and Urban Development (HUD).

The application states that Bank of America operates a “Connect to Own” program in which it enters into arrangements with housing counseling agencies that participate in HUD’s Housing Counseling Program (Participating Counseling Agencies<sup>1</sup>) for funding housing counseling services to consumers subject to specified conditions (Housing Counseling Funding Agreements). In addition, the application (i) confirms that (a) the terms of its existing Housing Counseling Funding Agreements are formalized in MOUs between Bank of America and the Participating Counseling Agencies (Existing Bank of America MOUs), and (b) these MOUs, and Bank of America’s related practices, are compliant with the applicable HUD requirements; and (ii) represents that (a) any future Housing Counseling Funding Agreements will be formalized in MOUs between Bank of America and the Participating Counseling Agencies (“Future Bank of America MOUs”), and (b) those MOUs, and Bank of America’s related practices, will be compliant with the applicable HUD

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<sup>1</sup> HUD maintains the list of Participating Counseling Agencies on its website at:  
<https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

requirements.<sup>2</sup>

As recommended in the September 10 NAL Template, Bank of America's application also includes a number of certifications that further support Bank of America's application, including its statement that the Existing Bank of America MOUs are consistent with – and Future Bank of America MOUs will be consistent with – applicable HUD requirements.<sup>3</sup>

The Bureau has considered and grants the application, and accordingly issues this No-Action Letter pursuant to the Bureau's Policy on No-Action Letters (Policy).

Unless or until terminated by the Bureau as described below, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against Bank of America under

- (a) section 8 of the Real Estate Settlement Procedures Act<sup>4</sup> (RESPA) and section 1024.14 of Regulation X,<sup>5</sup> or
- (b) its authority to prevent unfair, deceptive, or abusive acts or practices,<sup>6</sup>

for including and adhering to a provision in the Existing Bank of America MOUs and Future Bank of America MOUs that conditions Bank of America's payment for the housing counseling services on the consumer applying for a loan from Bank of America with respect to which Bank of America has received proof of completion of such counseling services ("HBE Proof of Completion") from the Participating Counseling Agency, even if that provision or the parties' adherence thereto could be construed as a referral (as such term is used in RESPA section 8(a) and defined in Regulation X, § 1024.14(f)); provided that, the level of payment for the housing counseling services does not exceed a level that is commensurate with the services provided and is reasonable and customary for the area.

Bank of America may reasonably rely on the preceding Bureau commitment.<sup>7</sup>

The Bureau may terminate this No-Action Letter if it determines that it is necessary or appropriate

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<sup>2</sup> For the applicable HUD requirements, the application cites 24 CFR 214 and HUD Handbook 7610.1 rev.5. This No-Action Letter applies to these HUD regulatory and program requirements and other program documents as they exist as of the date of this No-Action Letter.

<sup>3</sup> Bank of America's certifications deviate somewhat from the precise language of the certifications in the September 10 NAL Template for a number of reasons, including Bank of America's desire that the No-Action Letter cover both Existing Bank of America MOUs and Future Bank of America MOUs.

<sup>4</sup> 12 U.S.C. 2607.

<sup>5</sup> 12 CFR § 1024.14.

<sup>6</sup> 12 U.S.C. 5531, 5536. Implicit in the statement under clause (b) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

<sup>7</sup> The Bureau maintains the authority to obtain information relating to the consumer financial products and services covered by this No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to any consumer financial products or services not subject to a No-Action Letter.

to do so to advance the primary purposes of the Policy, such as where Bank of America fails to substantially comply in good faith with the terms and conditions of the No-Action Letter; Existing Bank of America MOUs or Future Bank of America MOUs do not perform as anticipated in Bank of America's application;<sup>8</sup> or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter.<sup>9</sup> In the event of such termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by this No-Action Letter, except where a failure to substantially comply in good faith with the terms and conditions of the No-Action Letter caused Dodd-Frank Act actionable substantial injury.<sup>10</sup>

Bank of America shall apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.<sup>11</sup>

This No-Action Letter is based on the factual representations made in the Bank of America application.

This No-Action Letter is limited to Bank of America and does not apply to any other persons or entities. This No-Action Letter is limited to Bank of America's conduct in connection with Existing Bank of America MOUs and Future Bank of America MOUs and only to the extent such conduct relates to the inclusion of and adherence to the MOU provision described in the fifth paragraph of this No-Action Letter. This No-Action Letter does not apply to any other conduct of Bank of America, such as other aspects of Existing Bank of America MOUs and Future Bank of America MOUs.

This No-Action Letter does not purport to express any legal conclusions regarding the meaning or application of the above-referenced laws and regulations; and does not constitute the Bureau's endorsement of any services, conduct, agreements, etc. described above or in the application, or any other product or service offered or provided by Bank of America.

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<sup>8</sup> Such ground includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

<sup>9</sup> If a Circuit Court of Appeals decision clearly prohibits conduct covered by the letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

<sup>10</sup> "Dodd-Frank Act actionable substantial injury" means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. *See* 12 U.S.C. 5531(c); *see also* 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 of the Policy to inform the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

<sup>11</sup> "Not performing as anticipated" includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

This No-Action Letter and a copy of the Bank of America application will be published on the Bureau's website.

Sincerely,



Paul Watkins  
Assistant Director, Office of Innovation  
Consumer Financial Protection Bureau<sup>12</sup>

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<sup>12</sup> This letter is issued pursuant to a delegation of authority from the Director of the Consumer Financial Protection Bureau to the Assistant Director, Office of Innovation, of the Bureau.