

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

|  |   |                        |
|--|---|------------------------|
| Secretary, United States Department of         | ) |                        |
| Housing and Urban Development, on behalf of    | ) |                        |
| Complainants, the Assistant Secretary for Fair | ) |                        |
| Housing and Equal Opportunity, [REDACTED]      | ) |                        |
| [REDACTED] and                                 | ) |                        |
| [REDACTED]                                     | ) |                        |
|  | ) |                        |
| Charging Party,                                | ) | FHEO Nos. 00-10-0003-8 |
|  | ) | 05-10-1630-8           |
| v.   | ) | 05-10-0635-8           |
|  | ) | 05-09-1203-8           |
| Bank of America, N.A, d/b/a Bank of America    | ) |                        |
| Home Loans, Carolyn Biscorner, and Lee Seidel, | ) |                        |
|  | ) |                        |
| Respondents                                    | ) |                        |
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**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On May 27, 2009, [REDACTED] filed a Fair Housing Act (“Act”) complaint with the U.S. Department of Housing and Urban Development (“HUD”). The complaint was amended on July 20, 2009 and August 19, 2009 to, *inter alia*, add [REDACTED] as a complainant and allege that Bank of America, N.A., d/b/a Bank of America Home Loans (“Bank of America”), and Lee Seidel, a Bank of America loan officer, discriminated because of disability in processing the [REDACTED] application for a home mortgage loan in violation of subsection 804(f)(2) and section 805 of the Act.<sup>1</sup>

On February 2, 2010, [REDACTED] filed a Fair Housing Act complaint with HUD alleging that Bank of America, N.A. discriminated because of disability in processing his application for a home mortgage loan in violation of subsections 804(f)(2) and 805 of the Act.

On July 2, 2010, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity filed a Fair Housing Act complaint with HUD. The complaint alleges that Bank of America discriminated because of disability in processing home mortgage applications in violation of section 805 of the Act.

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<sup>1</sup> The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

On August 10, 2010, [REDACTED] filed a Fair Housing Act complaint with HUD. The complaint was amended on November 12, 2010. As amended, the complaint alleges that Bank of America and Huron Shores Mortgage Company broker Carolyn Biscorner discriminated because of disability in processing [REDACTED] home mortgage application in violation of subsection 805 of the Act.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has redelegated the authority to the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Deputy Assistant Secretary for Enforcement and Programs of HUD's Office of Fair Housing and Equal Opportunity, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized and directed the issuance of this Charge of Discrimination. *See* 42 U.S.C. § 3610(g)(2).

## **II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE**

Based on HUD's investigation of the aforementioned complaints and the Determination of Reasonable Cause, Respondents Bank of America, Carolyn Biscorner, and Lee Seidel are charged with violating the Act as follows:

1. It is unlawful to make, print, or publish or cause to be made, printed or published, any notice or statement, with respect to the sale of a dwelling that indicates any discrimination based on disability or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.50(b)(4).
2. It is unlawful to discriminate in the sale, or to otherwise make unavailable or deny, a dwelling to any buyer because of a disability of that person or a person intending to reside in that dwelling after it is sold or made available. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
3. It is unlawful to discriminate against any person in the provision of services in connection with a dwelling because of a disability of that person or a person intending to reside in that dwelling after it is sold or made available. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
4. It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of disability. 42 U.S.C. § 3605(a); 24 C.F.R. § 100.130(a), (b)(1).

## PARTIES

5. Complainant [REDACTED] experiences a [REDACTED] and is a person with a disability, as defined by 42 U.S.C. § 3602(h). She is an aggrieved person as defined by 42 U.S.C. § 3602(i). Complainant [REDACTED] resides at [REDACTED] Oscoda, Michigan, 48750.
6. Complainant [REDACTED] has [REDACTED] and is a person with a disability, as defined by 42 U.S.C. § 3602(h). He is an aggrieved person as defined by 42 U.S.C. § 3602(i). Complainant [REDACTED] resides at [REDACTED], Eau Claire, Wisconsin 54701.
7. Complainant [REDACTED] is married to and resides with complainant [REDACTED]. She is an aggrieved person as defined by 42 U.S.C. § 3602(i).
8. [REDACTED] is [REDACTED] and is a person with a disability as defined by 42 U.S.C. § 3602(h). He is an aggrieved person as defined by 42 U.S.C. § 3602(i). Complainant [REDACTED] resides at [REDACTED], Lapeer, Michigan, 48446.
9. Complainants [REDACTED] each receive Social Security Disability Insurance benefits (“SSDI”) from the Social Security Administration (“SSA”).
10. Respondent Bank of America, N.A., d/b/a Bank of America Home Loans (“Bank of America”), is a member of FDIC and a national bank headquartered at 100 North Tryon Street, Charlotte, North Carolina, 28255. Respondent Bank of America, N.A., is a wholly owned subsidiary of Bank of America Corp. Respondent Bank of America is, and was at all times relevant, engaged in residential real estate-related transactions as defined by the Act at 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.
11. Respondent Carolyn Biscorner, an agent of Bank of America at all relevant times, was a mortgage broker at Huron Shores Mortgage Company, located at 129 River Street, Alpena, Michigan, 49707. Respondent Biscorner was at all times relevant engaged in residential real estate-related transactions as defined by the Act at 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.
12. Respondent Lee Seidel was, at all relevant times, a Bank of America loan officer at Bank of America Home Loans, 4410 Golf Terrace, Suite 101, Eau Claire, Wisconsin, 54701. Respondent Seidel engaged in residential real estate-related transactions as defined by the Act at 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.

## RELEVANT POLICIES

13. During all times relevant, Federal National Mortgage Association (“Fannie Mae”) underwriting guidelines did not require borrowers to prove the future continuance of

SSDI benefits in order for a lender to count their SSDI income in qualifying them for a conventional home mortgage loan. Fannie Mae's Selling Guide required lenders to verify the future continuance of "disability income" and "Social Security" income only if "the benefits have a defined expiration date." Fannie Mae's Selling Guide specifically instructed lenders that SSDI benefits do not have defined expiration dates and thus a lender "may conclude that the income is considered stable, predictable, and likely to continue and is not expected to request additional documentation from the borrower."

14. At all times relevant, Bank of America's conventional underwriting "Employment and Income" guidelines required "Disability/Worker's Permanent Disability Compensation" to be documented, in relevant part, by "[a]ward letters indicating the payment amount and conditions for termination of payment which must continue for three years."
15. At all times relevant, Veterans Administration ("VA") underwriting guidelines did not require borrowers to prove that a disability is permanent in order for a lender to count their disability income in qualifying for a VA-insured home mortgage loan. The VA Lender's Handbook classifies disability income as "other" income which it instructs lenders to include as "effective income" if "it is reasonable to conclude that [it] . . . will continue in the foreseeable future."
16. Bank of America's underwriting guidelines for VA-insured loans, applicable at all relevant times, required disabled borrowers to "provide evidence the disability is permanent in nature, such as a physician's statement" in order for the borrower to use disability income to qualify for a VA-insured home mortgage loan.
17. Bank of America's practices imposed a higher documentation burden on borrowers receiving disability income than on borrowers receiving employment-related income. In order to show continuance of income, Complainants were required to provide information about the nature and/or severity of their disability.

COMPLAINANT [REDACTED]

18. On December 14, 2009, Complainant [REDACTED] applied for a conventional 30 year fixed-rate Bank of America home mortgage loan through Respondent Biscorner at Huron Shores Mortgage Company. Complainant [REDACTED] sought to purchase a dwelling, as defined by 42 U.S.C. § 3602(b), located at [REDACTED] Oscoda, Michigan, 48750.
19. In support of her loan application, Complainant [REDACTED] provided to Respondents Biscorner and Bank of America two documents from the SSA demonstrating her receipt of SSDI benefits, as well as a Form SSA-1099, for the years 2007 and 2008, showing her regular receipt of SSDI benefits during those years.
20. None of the SSA documents described in the preceding paragraph indicated a



CLUES by providing his SSDI award letter and two most recent months' bank statements demonstrating payment of his SSDI benefits. Complainant [REDACTED] SSDI award letter did not indicate an expiration date for his SSDI benefits.

29. On August 14, 2009, Bank of America's underwriter requested that Complainant [REDACTED] provide "evidence of continuance of the social security because the borrower is not of retirement age." When asked to provide proof of three years of continuance of the income, Complainant [REDACTED] informed Bank of America that it would be impossible to obtain a letter from the SSA verifying that his SSDI benefits would continue for three years. Respondent Bank of America's loan processor confirmed that it would be impossible to obtain such a letter.
30. On or about September 2, 2009, Respondent Bank of America requested that Complainant [REDACTED] obtain a letter from his doctor in order to satisfy its underwriter. Complainant [REDACTED] spoke to Bank of America questioning the need for a statement from his doctor. During that conversation, Complainant [REDACTED] withdrew his loan application because he believed it was an illegal request and he was given no guarantee that the letter from his doctor would be enough to satisfy the underwriter.
31. Thereafter, Complainant [REDACTED] received by mail a Notice of Action Taken, dated September 4, 2009, stating that Bank of America was denying his loan application because of "unverifiable information."
32. On or about September 10, 2009, Complainant [REDACTED] applied for a second loan through an independent mortgage broker. That broker submitted Complainant [REDACTED] new application to Respondent Bank of America, which granted the loan in October 2009.
33. In a letter dated April 15, 2010, responding to a separate complaint filed by Complainant [REDACTED] with the Office of the Comptroller of the Currency ("OCC"), Respondent Bank of America admitted that it had erred in requiring proof of continuance of his SSDI payments, stating:

Bank of America's underwriting guidelines allow for the source to be verified using a social security or retirement letter, which we received. Our automated underwriting system yielded a condition that stated if there was an expiration date on your award letter, we would need at least three years proof of continuance. In review of your award letter, we determined that it did not contain an expiration date; therefore, the underwriter misinterpreted the condition and could have made an exception to the continuance requirement. We apologize for the oversight... Our records indicate you were not charged any fees for your application and as such, no refund is necessary at this time.
34. As a result of Respondent Bank of America's actions, Complainant [REDACTED] suffered actual damages, including emotional distress.

[REDACTED] COMPLAINANTS

35. On April 6, 2009, the [REDACTED] Complainants applied for a VA-insured 30 year fixed-rate home mortgage loan from Countrywide Home Loans to purchase a dwelling, as defined by the Act, located at [REDACTED], Eau Claire, Wisconsin, 54701. During the application process, Countrywide merged with Respondent Bank of America and, thereafter, the [REDACTED] Complainants' application was processed by the Bank of America branch located at 3201 E. Calumet Street, Appleton, Wisconsin 54915. The application was assigned to an underwriter at the Bank of America Corporate Underwriting Support Division in Plano, Texas.
36. For the [REDACTED] Complainants' loan, CLUES required one of the following to document their SSDI income: "award letter, most recent two months bank statements, most recent two years signed 1040's and 4506-T or two years of 1099's." CLUES instructed that "Benefits with a defined expiration date must have at least three years remaining from the date of the application. If the borrower is of retirement age, verification of continuance is not required."
37. Complainant [REDACTED] submitted to Respondent Bank of America the information required by CLUES by providing his Social Security award letter, VA benefits award letter, 1099s from 2007 and 2008, and bank statements. Complainant [REDACTED] Social Security award letter did not indicate an expiration date for his SSDI payments.
38. On May 12, 2009, Bank of America's underwriter noted in the [REDACTED] file: "SS document in the file doesn't say if this income will continue for next 3yrs or/and this disability income is a permanent and continues is for sure. Contact the borrowers DR and get a letter [sic]." As she explained in her deposition, the underwriter "wanted to clarify the [REDACTED] Complainants' permanent disability condition" because Bank of America's policies and procedures require that a disabled person "must provide evidence that [the] disability is permanent in nature such as a physician's statement."
39. According to Respondent Seidel, Respondent Bank of America required its agents to ask an applicant with disability-related income whether the disability was permanent or temporary, regardless of the type of disability benefits. Respondent Bank of America required confirmation that a disability was permanent even if the income came from SSDI. In accordance with this policy, Respondent Seidel asked Complainant [REDACTED] to provide a letter from his doctor to satisfy Bank of America's requirements.
40. Later on May 12, 2009, Terri Wiegert, the Bank of America employee who assisted in processing the [REDACTED] Complainants' loan, emailed Respondent Seidel alerting him that the loan would not close the next day and "[t]he underwriter does not like what I sent her." She explained that "I need his dr. to write a letter stating that [REDACTED] [REDACTED] is permanently disabled. It doesn't have to say why he is disabled, just

that he is permanently disabled.” Thereafter, Respondent Seidel contacted Complainant [REDACTED] to ask that he provide a letter from his doctor.

41. Because the [REDACTED] Complainants did not provide the requested documentation, their May 13, 2009 closing date passed without Respondent Bank of America approving their loan application. Consequently, they lost the opportunity to purchase the home they desired.
42. Respondent Bank of America issued a Notice of Action Taken dated May 14, 2009 stating that it was “unable to approve” the [REDACTED] application due to “unverifiable information: For [REDACTED]: UNABLE TO VERIFY QUALIFYING INCOME.”
43. On May 20, 2009, the [REDACTED] provided the following to Bank of America: In a letter dated May 19, 2009, [REDACTED], MD stated with regard to Mr. [REDACTED] that “This patient has permanent disability status.” Later the same day, Bank of America responded to the loan officer that the loan had already been cancelled and the file had been shipped to “corporate.”
44. As a result of Respondents Bank of America’s and Seidel’s actions, the [REDACTED] Complainants suffered actual damages, including emotional distress. They suffered inconvenience and a lost housing opportunity because they were unable to purchase the home they had chosen.

### **III. ALLEGED VIOLATIONS**

45. By imposing unnecessary and unduly burdensome disability income documentation requirements upon borrowers with disabilities by requiring (1) for conventional loans, proof that their SSDI benefits would continue for at least three years after the loan closed; (2) for Veterans Administration-insured loans, proof that their disabilities were permanent; and (3) information on the nature of borrowers’ disabilities, Respondent Bank of America discriminated because of disability in violation of sections 804(c), 804(f)(2), and 805(a) of the Act.
46. By requiring a letter from a doctor establishing Complainant [REDACTED] disabling condition and that her SSDI benefits would continue for three years, Respondents Bank of America and Biscorner discriminated because of disability, in violation of subsections 804(c), 804(f)(2), and 805(a) of the Act.
47. By requiring a letter from a doctor establishing that Complainant [REDACTED] SSDI benefits would continue for three years, Respondent Bank of America discriminated because of disability, in violation of subsections 804(c), 804(f)(2) and 805(a) of the Act.
48. By requiring a letter from a doctor establishing the permanence of Complainant [REDACTED] disability, Respondents Bank of America and Seidel discriminated because of disability, in violation of subsections 804(c), 804(f)(2) and 805(a) of the

Act. By denying the [REDACTED] Complainants' loan, Respondents Bank of America and Seidel discriminated because of disability in violation of subsection 804(f)(1) of the Act.

#### **IV. CONCLUSION**

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents Bank of America, Carolyn Biscorner, and Lee Seidel with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(c), (f)(1)-(f)(2) and 42 U.S.C. § 3605; 24 C.F.R. §§ 100.50(b)(4), 100.202(a) and (b), and 100.130(a), and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate subsections 804(c), 804(f)(1)-(2), and 805 of the Act, 42 U.S.C. § 3604(c), (f)(1)-(f)(2); 42 U.S.C. § 3605.
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of home mortgage lending;
3. Awards such monetary damages as will fully compensate Complainants and any other aggrieved persons;
4. Awards a civil penalty against each respondent for each of their violations of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
5. Awards any additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 23rd day of January, 2012.

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