

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement (“Agreement”) is between Bank of America, N.A. (“Bank of America” or “Bank”) and the United States Department of Labor (“DOL”), Edward Hugler in his official capacity as Acting United States Secretary of Labor, the Office of Federal Contract Compliance Programs (“OFCCP”), and Thomas Dowd in his official capacity as Acting Director of OFCCP (collectively, the “Government Parties”). The Bank and the Government Parties shall be referred to collectively as the “Parties.”

On July 18, 1997, OFCCP filed an administrative complaint against NationsBank, N.A., alleging that it violated Executive Order (“EO”) 11246 by discriminating against minority applicants in several job groups at its Charlotte, North Carolina headquarters. ALJ Case No. 1997-OFC-016. NationsBank merged with Bank America in 1998. On August 11, 2004, the Administrative Law Judge (“ALJ”) rejected the Bank’s Fourth Amendment challenge to OFCCP’s selection of NationsBank’s Charlotte headquarters for a compliance review on the grounds that it voluntarily consented to the compliance review. On January 21, 2010, the ALJ issued a decision on liability, recommending that the Bank be found to have violated EO 11246 by discriminating against African-American applicants in two job groups in 1993 and in the period from 2002 to 2005. On September 17, 2013, the ALJ issued a decision on remedies, recommending an award of back pay and interest against the Bank for 1993 and for 2002 to 2005, and a total of ten job offers to applicants. After Bank of America filed exceptions to the ALJ’s recommended decisions, the Administrative Review Board (“ARB”) issued a Final Decision and Order on April 21, 2016, adopting the decisions pertaining to 1993, and rejecting

the decisions pertaining to 2002 to 2005. ARB Case No. 13-099. (ALJ Case No. 1997-OFC-016 and ARB Case No. 13-099 together are referred to herein as the "Administrative Proceeding.")

On May 23, 2016, Bank of America commenced a civil action against the Government Parties in the United States District Court for the District of Columbia, challenging the ARB's final decision and order under the Administrative Procedure Act. Bank of America v. U.S. Dep't of Labor et al., C.A. No. 1:16-cv-968-ABJ (the "Civil Action").

II. TERMS

Whereas the Parties now mutually desire to resolve all claims in the Civil Action and the Administrative Proceeding without the need for further litigation, and without any admission of liability by any Party;

The Parties hereby accordingly agree to compromise, settle and resolve each claim in the Civil Action and the Administrative Proceeding on the following terms and conditions:

III. GENERAL PROVISIONS

1. Privacy Act Protective Order. No later than five days after this Agreement is executed by all signatories listed below, counsel of record for the Parties in the Civil Action shall execute and file a Joint Motion for Privacy Act Protective Order ("Protective Order"), in the form attached hereto as Exhibit 1, with respect to the disclosure of information regarding the Applicants under the Specific Provisions below.

2. Joint Motion to Stay. On the date that the proposed Protective Order (Exhibit 1) is filed as provided in paragraph 1 above, counsel of record for the Parties in the Civil Action also shall execute and file a Joint Motion to Stay Proceedings ("Motion to Stay"), in the form attached hereto as Exhibit 2, informing the Court that the Parties have executed an agreement to

settle the Civil Action and requesting that, after the Court enters the proposed Protective Order, further proceedings be stayed pending performance of the settlement agreement.

3. Dismissal of Claims. Within five days after this Agreement is executed by all signatories listed below, counsel of record for Bank of America in the Civil Action shall execute and forward to counsel of record for the Government Parties a Stipulation of Dismissal with Prejudice ("Stipulation of Dismissal"), in the form attached hereto as Exhibit 3, under Fed. R. Civ. P. 41(a)(1)(A)(2). Once the Agreement takes effect, and the Parties agree that all requirements under the Agreement have been met, counsel of record for the Government Parties in the Civil Action shall promptly file the Stipulation of Dismissal.

4. Effective Date. If the Court denies either the Motion for Protective Order or the Motion to Stay (Exhibits 1 and 2), the Agreement shall not take effect, and counsel of record for the Government Parties shall not file the Stipulation of Dismissal (Exhibit 3). If both the proposed Protective Order and the proposed Stay are entered by the Court as filed by the Parties, the Agreement shall take effect on the date the Court enters the Protective Order or the date the Court enters the Stay, whichever occurs last ("Effective Date"). If the Court enters the proposed Protective Order and/or the proposed Stay in modified form, a Party shall have five days from the date that would have been the Effective Date pursuant to the previous sentence to void the Agreement, by providing written notice to the other Parties' counsel of record. If no such written notice is received by the other Parties' counsel of record within that five-day period, the Agreement shall take effect on and the Effective Date shall be the following day.

5. Release.

(a) As of the Effective Date, the Government Parties, including all agencies, components, offices and establishments of DOL, hereby waive, release and forever discharge

Bank of America, and any present and former parents, affiliates, subsidiaries, officers, employees, agents, or successors, from any and all claims, demands and causes of action of every kind, nature or description, whether known or unknown, which have been or could have been asserted in the Administrative Proceeding or the Civil Action, including without limitation all claims arising from (a) OFCCP's selection of NationsBank's Charlotte headquarters for a compliance review, (b) the ARB's April 21, 2016 Final Decision and Order, and (c) all prior rulings in the Administrative Proceeding. The Government Parties also agree that they will not seek to re-litigate any claims which were or could have been raised by the Government Parties in the Civil Action or the Administrative Proceeding, or any claims released by means of the Agreement.

(b) As of the Effective Date, Bank of America, for itself and its representatives, successors, or assigns, hereby waives, releases and forever discharges the Government Parties, all agencies, components, offices and establishments of DOL, and any present and former officers, employees, agents, or successors, in their official and their individual capacities, from any and all claims, demands and causes of action of every kind, nature or description, whether known or unknown, which have been or could have been asserted in the Administrative Proceeding or the Civil Action, including without limitation all claims arising from (a) OFCCP's selection of NationsBank's Charlotte headquarters for the compliance review from which the claims in the Administrative Proceeding and Civil Action arose, (b) the ARB's April 21, 2016 Final Decision and Order, and (c) all prior rulings in the Administrative Proceeding. Bank of America also agrees that it will not seek to re-litigate any claims which were or could have been raised by Bank of America or NationsBank in the Civil Action or the Administrative Proceeding, or any claims released by means of the Agreement.

6. ARB's Final Decision. If Bank of America completes all requirements under this Agreement, this shall constitute full compliance with the ARB's April 21, 2016 Final Decision and Order.

7. No Admission. This Agreement is not intended, and shall not be construed, as an admission by any Party of the truth of any allegation or the validity of any claim asserted by any other Party in the Civil Action. Bank of America specifically denies that it discriminated against any African-American applicants for employment including those in 1993 or in the 2002-2005 time period at issue in the Administrative Proceeding or the Civil Action.

8. Merger. The terms of this Agreement constitute the entire agreement of the Parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein shall be recognized or enforced.

9. Amendments. This Agreement cannot be modified or amended except by an instrument in writing signed by the Parties; nor shall any provision hereof be waived other than by a writing setting forth such waiver and signed by the Party to be charged with such waiver.

10. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and personal representatives, including any persons, entities, departments or agencies succeeding to their interests or obligations.

11. Authority. Each person signing this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he or she has full authority to so execute the Agreement.

12. Counterparts. This Agreement may be executed in counterparts.

13. Costs and Fees. Each Party shall bear its own attorney fees and costs in the Administrative Proceeding and the Civil Action.

IV. SPECIFIC PROVISIONS

A. Notice to Affected Applicants

1. For purposes of this Agreement, the affected applicants are the African-American applicants who applied for entry-level positions at NationsBank's Charlotte headquarters in 1993 in job groups 5A2 and 5F2 and were not offered a position ("Applicants"), as identified on the Applicant List as defined in Paragraph IV.A.2.

2. Within five days of the Effective Date, OFCCP will forward to Bank of America, by electronic mail, a list in electronic form (e.g., Excel) of the Applicants, including for each his or her name, most current address, and Social Security Number ("Applicant List"). Using the Applicant List, the Bank shall send by regular mail to each Applicant, within 35 days of the Effective Date, a Notice in the form of Exhibit 4 ("Notice") and a Claim Form and Release of Claims in the form of Exhibit 5 ("Claim Form/Release"). These documents shall be referred to collectively as the "Notice Documents." The date the Notice Documents are sent shall be referred to as the "Notice Date."

3. Each Applicant (or his or her legal representative in the event that he or she is deceased) shall have 90 days from the Notice Date to return a completed and signed Claim Form/Release. The Bank shall identify on the Applicant List those Applicants who do not respond within 50 days after the Notice Date, and shall send this list to OFCCP, by electronic mail, within 60 days of the Notice Date. Within 45 days of receipt of this list, OFCCP shall provide the Bank with an updated Applicant List, by electronic mail, with any changes of address highlighted ("Updated Applicant List"). Within 15 days of receipt of the Updated Applicant

List, the Bank shall send revised Notice Documents by regular mail to only those Applicants who have a new address highlighted on the Updated Applicant List and who have not responded in the interim. The individuals to whom the Notice Documents are sent a second time shall have 90 days from the date of mailing to respond. In the event the Bank deems a Claim Form/Release to be incomplete or unsigned, the Bank shall inform the Applicant of the defect by regular mail (copying OFCCP) within 10 days of receipt, providing the Applicant with 15 days to cure the defect. For purposes of this paragraph, any response by an Applicant that is postmarked by the deadline shall be considered to have been timely submitted. Applicants who timely submit a completed and signed Claim Form/Release shall be referred to as "Eligible Recipients."

4. After the final applicable deadline in the prior paragraph, Bank of America shall submit to OFCCP a list of Eligible Recipients, with copies of their Claim Forms/Releases.

5. If OFCCP believes any Applicants have been inadvertently omitted from the list of Eligible Recipients, it shall inform Bank of America within 15 days of its receipt of the list. The Parties will make every effort and negotiate in good faith to resolve any resulting dispute, and the Bank will add any Applicants whom it agrees should be included to the list of Eligible Recipients no later than 25 days after OFCCP's receipt of the list. The final list of Eligible Recipients shall be referred to as "Eligible Recipient List."

6. Any Applicant who is not an Eligible Recipient shall not be entitled to any relief described in Part IV.B below.

B. Back Pay/Interest

1. In settlement of all remedies awarded by the ARB, Bank of America agrees to pay the total amount of One Million Dollars (\$1,000,000), which represents a negotiated resolution of

any back pay to the Applicants plus any accrued interest to date. This amount shall be referred to as the "Settlement Amount."

2. Within 25 days of the Effective Date, Bank of America shall establish an interest-bearing account at the prevailing interest rate, and shall deposit the Settlement Amount into that account. This amount, plus any interest that accrues between the date the account is opened and 15 days before distribution pursuant to Paragraph IV.B.3 below, shall be referred to as the "Settlement Fund." Seven Hundred Sixty-Three Thousand Dollars (\$763,000) shall be considered the back pay portion of the Settlement Fund. Two Hundred Thirty-Seven Thousand Dollars (\$237,000) plus any additional interest accrued shall be considered the interest portion of the Settlement Fund.

3. Within 30 days after the Eligible Recipient List is finalized pursuant to Paragraph IV.A.5 above, Bank of America shall distribute the Settlement Fund equally among the Eligible Recipients, with 76.3% of the payment to any Eligible Recipient being attributed to back pay and the remainder being attributed to interest.

4. Bank of America shall make all legal deductions required by law (i.e., federal, state, and local taxes and FICA), and shall pay to the Internal Revenue Service the employer's share of FICA attributable to the back pay payments made. Bank of America shall provide an IRS Form W-2 (representing the amount of back pay) and an IRS Form 1099 (representing the amount of interest on back pay) to each Eligible Recipient.

5. Within 7 days of receipt of a check that was sent to an Eligible Recipient but that has been returned to the Bank as undeliverable, Bank of America shall notify OFCCP of this fact. If OFCCP obtains an alternate address for the Eligible Recipient, OFCCP shall inform the Bank

within 21 days of such notice from the Bank, and the Bank shall reissue and re-send a check within 7 days of receiving an alternate address from OFCCP.

6. The total amount of any checks that remain uncashed beyond the cashing period allowed by their terms shall be referred to as "Uncashed Funds." If the distribution of the Uncashed Funds would result in a payment of \$30 or more to each of the Eligible Recipients who cashed his or her check, Bank of America shall distribute the Uncashed Funds equally among such persons within 60 days after the total amount of the Uncashed Funds is determined.

7. The Bank shall provide OFCCP with copies of cancelled checks disbursed by the Bank to Eligible Recipients, or equivalent documentation verifying that they were paid, and documentation of the remaining balance.

8. After all notices have been sent and all checks have been issued in accordance with the foregoing provisions and the cashing period time of all such checks has expired, any residual amounts in the account established pursuant to Paragraph IV.B.2 above shall remain with Bank of America and shall be used to provide training in equal employment opportunity to its personnel.

C. Miscellaneous.

1. Bank of America may hire a third party administrator to perform its obligations under Section IV, the Specific Provisions, of this Agreement.

EXECUTED AND SIGNED BY THE PARTIES on this 29 day of March 2017

AGREED BY:

On Behalf of Defendants in the Civil Action:

(6), (7)(C)

THOMAS M. DOWD
Deputy Director
Office of Federal Contract Compliance Programs
United States Department of Labor

(6), (7)(C)

Peter T. Wechsler
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch

On Behalf of Plaintiff in the Civil Action:

(6), (7)(C)

Robert Scott Randolph
SVP, Employee Relations Executive
Bank of America, N.A.