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The Hon. Ben Bernanke, Chairman
Federal Reserve Board of Governors
20th and Constitution Ave.
Washington, DC 20551

Dear Chairman Bernanke:

On behalf of the 2.1 million members that make up the Service Employees International Union ("SEIU"), I respectfully provide these comments on the Federal Reserve Board's (hereinafter "the Board") Proposed Guidance on Sound Incentive Compensation Policies (hereinafter "the guidelines"). SEIU represents workers whose retirement security has been decimated by the risky behavior of financial institutions, behavior that is encouraged by unsound compensation policies. Consequently, we are greatly encouraged by these guidelines and we appreciate the opportunity to submit commentary.

SEIU is well known for its corporate governance program. We have commented on SEC and Treasury initiatives on executive compensation, and have long advocated for tying executive pay to long-term performance based metrics. We are pleased to see that the Board has released compensation principles that are steps in the right direction. It is no secret that misaligned incentive-based compensation structures fueled excessive risk taking and led to losses that undermined the safety and soundness of many financial institutions. Shareholders who are trying to reign in abusive executive compensation practices are constrained by state and federal law, and that is why it is appropriate for the Board to step in and take action. The Board's emphasis on requiring banks to balance risk with reward over the long-term, to implement effective controls and risk management practices, and to put strong corporate governance measures in place appears to be a positive development.

While we applaud these efforts, we believe that the guidelines need to extend beyond the consideration of risks posed by traders and management to addressing the compensation practices governing lower-level employees at banking organizations.[1] The Los Angeles Times,

[1] The guidelines should define "banking organization" to include all Federal Reserve member banks, including national associations. The current definition contained in the proposed guidelines exclude national associations, which are Fed member banks, from the definition. Such exclusion could serve as a loophole for a bank seeking to be excluded from the ambit of the Board's actions for no good reason.

Reuters and Associated Press have reported that tellers and personal bankers at Bank of America and other institutions were required to use anti-consumer and exploitative practices to sell financial products that were inappropriate for customers' needs in order to obtain incentive-based compensation goals. These practices exposed financial institutions to potentially immense legal, regulatory and reputational risks. The desire to engage in such practices is exacerbated by the incentive-based compensation plan structure, which consists of low base salaries and unattainable sales goals. Unlike traders who make base salaries that are sufficient for living comfortably, many lower level workers' base salary do not even cover their basic living expenses. These workers are forced to rely on receiving incentive compensation to pay for their necessities. We believe that the guidelines should be revised to explicitly reflect these realities.

In addition, we recommend three changes that the Board can undertake to make its supervision of executive compensation more effective. First, the Board should reissue this guidance as an enforceable rule. Such a move is imperative for giving the principles contained in the guidelines real strength and meaning. Under the guidelines, executive compensation would be included as a component of a bank's management rating under the CAMELS rating system, which does not allow examiners to promptly address misaligned pay if the bank achieves a high composite CAMELS rating. This means that an examiner would be powerless to address compensation problems unless the composite CAMELS score reached a low enough level that the examiner could require the institution to take corrective action. The recent economic meltdown shows us that such an approach is shortsighted and misguided.

We have recently seen how many financial institutions paid their executives and traders for their success in generating short-term profits though the information contained in publicly traded financial firms' securities filings indicated that the institutions were well capitalized. Compensation-based incentive schemes at many of these banks encouraged their employees to continue taking short-term risks, contributing to the near failure of many of these financial institutions. If the current guidelines were applied, a bank examiner would have no basis for taking action at a bank with misaligned incentive schemes if it was well capitalized. Such an approach will not solve the problem because incentive pay structures need to be addressed *ex ante*, not *ex post*. While the review that the Board will undertake as part of a supervisory initiative will help ameliorate this concern, without the immediate enforcement power of an enforceable rule, we believe that there will be little change in how financial institutions structure their compensation plans.

We recognize the perspective that the issuance of guidelines would give the Board more flexibility in supervising financial institutions; however, the Board has a long history of promulgating rules and regulations such as Regulation Y that contain legal standards instead of bright line rules. The Board has been able to accommodate variations in how financial institutions carry out their activities over the years. Reissuing this guidance as a rule would be no different.

Second, we suggest the Board craft a rule that would contain a *per se* ban on specific practices that corporate governance and executive pay experts typically agree have a long and demonstrable history of being abused. These pay practices include immediate salability of equities, bonuses that are based on metrics of one year or less, and golden parachutes. The Board could incorporate the compensation principles outlined in the guidance into any rule that it promulgated.

Third, the Board should set out corporate governance minimum standards that are applicable to larger institutions. While having a compensation committee made up of outsiders makes sense, such a mechanism is ineffective if the entire board's governance structure is not sound. To that end, we recommend that the board require or otherwise incentivize member banks to have independent chairmen, declassified boards, say on pay, and a strong clawback mechanism that requires clawback of any gains that are later shown to be illusory.

Thank you for the opportunity to provide comments on this important matter. If you have any further questions, please contact Lilah Pomerance, Executive Branch Liaison, at 202-730-7704.

Sincerely yours,

Anna Burger
International Secretary-Treasurer

http://www.latimes.com/business/la-fi-bofa30-2009jun30,0,6339542.story

Los Angeles Times

Bank of America is accused of exploiting Latino immigrant customers

Ex-employees, backed by SEIU, say working-class and immigrant clients are urged to sign up for multiple services that carry high interest rates and fees. BofA denies any wrongdoing.

By Tom Hamburger

June 30, 2009

Reporting from Washington — Gabby Ornelas, a former teller at the giant Bank of America Corp., remembers the training sessions. And she remembers her marching orders: "Sell, sell, sell."

Ornelas was instructed to use her Spanish language skills and Latina heritage to sign up customers for as many kinds of banking services as possible, she said -- services that led to lucrative fees for the bank and financial entanglement for many customers.

"We were coached every day to push multiple checking accounts, credit cards and debit cards even when the customer didn't understand how to use them," said Ornelas, who lives in Landover Hills, Md., a town with a large immigrant population and a per-capita income of less than $19,000.

In one case, she described a Central American mother of three who came back to see her at the bank, distressed about $300 in overdraft fees incurred after Ornelas persuaded the woman to open a second checking account.

Ornelas and eight of her colleagues leveled the accusations in recent interviews. They are being backed in their whistle-blowing by the Service Employees International Union, which is trying to organize BofA, the nation's largest bank.

Bank of America officials flatly rejected the allegations, saying their policies are legal, adhere to industry standards and are helpful to customers, including immigrants seeking a toehold in the United States.

"Bank of America believes the SEIU's claims misrepresent the bank's relationship with its customers and its associates," said Anne Pace, a bank spokeswoman.

The former workers said they were going public to lay out what they saw as a little-known side of BofA's business model: encouraging working-class customers to sign up for high-interest-rate credit and cash advance services and structuring an array of check and debit card services to maximize overdraft fees and other charges.

The campaign will be launched publicly this week, with workers scheduled to tell their stories in news conference calls and meetings with members of Congress. The union is seeking to pressure the bank and to build support for legislation now stalled in the Senate that would make it easier for union members to organize.

Bank of America said that the former employees are a disgruntled minority and that internal surveys show that most employees of the company are overwhelmingly satisfied.

Other critics of SEIU said the union might have a conflict of interest because it has outstanding loans with the bank.

Many of the workers speaking out were fired from the bank, most before they took their complaints public. One worker has said her firing was related to her interest in the union. One worker is still employed at BofA.

BofA's Pace said that all of the bank's activities are not only legal but also useful to consumers, particularly those who have recently arrived in the U.S.

"We believe a checking account is the cornerstone to establishing financial security in this country," Pace said in an e-mail. "We offer innovative financial services to meet the needs of all of our customers, including Hispanic customers."

Pace also said the bank had taken steps to help customers facing "financial challenges." For example, she said, the bank waives certain monthly fees for customers who have lost their jobs and has reduced penalty fees for customers who overdraw their accounts by less than $5.

Although BofA denies wrongdoing, it recently paid $35 million to settle a class-action suit in California that alleged it deliberately ranked customer debits by order of size rather than by the time of day they occurred in order to maximize overdraft charges.

Pace said that the settlement does not include any acknowledgment of wrongdoing or even of the practices alleged in the suit, and that the bank paid the $35 million to avoid excessive legal bills.

Consumer advocates see it differently.

"Bank of America has moved to the top of the charts for fees being charged to consumers by big banks," said Jean Ann Fox, director of financial services for the Consumer Federation of America.

Ornelas and three other former BofA tellers, all Latina women, said they and their co-workers were repeatedly instructed to seek potential new Spanish-speaking customers outside the bank. Some were instructed to go to embassies where recent emigres often wait in queue for visa and passport services.

Other tellers were asked to go to neighborhood stores, clinics and child welfare centers, and several were asked to recruit customers at a religiously oriented Mother's Day celebration, they said.

"We were told to push them to sign up for multiple checking accounts, which they didn't need," said Ambar Sandoval, a former teller at a BofA branch in Central Los Angeles who said she repeatedly resisted efforts to go recruit customers at a center for single mothers in Los Angeles.

The ex-employees provided some documentation for their claims, including internal bank memos showing a schedule of opportunities to solicit accounts among the crowds at Central American embassies and Latino community events. The documents also showed details of the sales goals pressed on branch employees.

Consumer advocate Fox was particularly critical of banks' practice of recording debits by order of magnitude, which half the country's leading banks do. Fox said the practice makes it more likely that even careful consumers will overdraw their account.

BofA defends the practice, saying it assures customers that their largest, most important payments have priority.

Fox said it's a tactic banks use to make sure their fee revenues remain high. She said consumers unwittingly and unfairly incur overdraft fees when using a debit card.

"People think that if they use their debit card, they will only spend money that they have in their accounts. But Bank of America and other big banks have found ways to turn your debit card into a credit instrument with which you can rack up extreme debt," she said.

For example, BofA permits a customer using a debit card to spend, say, $20 at a grocery store even if the bank account is depleted. Without informing the customer, the bank automatically imposes an overdraft fee of $35. An additional $35 fee is imposed less than a week later if the account is still out of balance.

These rates mean that consumers are in effect paying $70 for a $20 extension of credit at the grocery store, Fox said.

Pace said BofA offers overdraft protection and other services to "give our customers more control and flexibility to effectively manage their accounts and prevent fees."

http://www.reuters.com/article/rbssFinancialServicesAndRealEstateNews/idUSN3050761520090630

REUTERS

Bank of America accused of anti-consumer practices

Tue Jun 30, 2009 12:42pm EDT

* Bank allegedly promotes sales quotas, needless fees

* Congressman says push to sell products can add risk

* Bank rejects accusations by consumer and labor groups

By Jonathan Stempel

NEW YORK, June 30 (Reuters) - Consumer and labor groups demanded Bank of America Corp (BAC.N: Quote, Profile, Research, Stock Buzz) and other lenders reform their sales practices so that workers under pressure to meet sales quotas do not saddle customers with costly and unnecessary products.

The whistleblowing campaign was announced Tuesday as the U.S. Treasury Department unveiled legislation to create a Consumer Financial Protection Agency, as part of the Obama administration financial regulation overhaul. [ID:nN30437901]

People, who said they were former Bank of America employees, alleged that their supervisors drove them to burden consumers with needless debt and fees, to fatten the bank's earnings and the paychecks of senior executives, and threatened to retaliate if they complained. Some complained their salaries had been too low and that they had to hit quotas to earn needed bonuses.

"This is the kind of information that really needs to get out," said Representative Keith Ellison, a Minnesota Democrat who sits on the House Financial Services Committee. "Without a strong whistleblower law, we simply are not doing the things we need to do in order to manage risk properly."

He suggested that lending standards could be compromised by "the urgency to sell, sell, sell, sell, sell."

Groups conducting the campaign include the Service Employees International Union, which is trying to organize Bank of America workers; the National Association of Consumer Advocates, and the U.S. Public Interest Research Group.

Bank of America spokeswoman Anne Pace rejected the allegations, saying the SEIU misrepresented the largest U.S. bank's relationship with its customers and associates.

She said the Charlotte, North Carolina-based bank is "pro-associate and believes that managers are well-equipped to respond to associates' needs," and is committed to ensuring that customer fees are "transparent and predictable."

Christopher Feener, who said he used to work in the bank's credit card unit, was among the former workers who spoke out.

He complained that the bank regularly violated the Fair Debt Collection Practices Act, and sometimes pushed workers to falsely threaten legal action against customers. He said his team was sometimes pushed to call customers' neighbors about delinquent accounts, "to embarrass the customer and actually encourage the neighbor to bring over a message."

Shares of Bank of America rose 5 cents to $13.24 in early afternoon trading on the New York Stock Exchange. (Reporting by Jonathan Stempel; Editing by Tim Dobbyn) http://www.google.com/hostednews/ap/article/ALeqM5ii3GPvaFA7Rtfpbe3fTN2ZIYyVagD994KHF80

Associated Press

Bank employees protest 'anti-consumer' practices

By DANIEL WAGNER

WASHINGTON (AP) — Risky bank policies that contributed to the financial crisis were as common in neighborhood branches as they were on Wall Street, according to a labor-backed coalition that will propose new reforms Tuesday.

Bank of America Corp. and other large banks encouraged customer service representatives and tellers to burden consumers with debt and enroll them in high-fee programs, alleges a group which includes the National Association of Consumer Advocates and the U.S. Public Interest Research Group.

"One of the core parts of the economic collapse is a business model that encourages too much risk or short-term profit over long-term stability," said Stephen Lerner, who runs the financial reform project for the Service Employees International Union, which is coordinating the effort.

Lerner said employees under pressure to sell high-fee products ended up targeting vulnerable populations, including students and the elderly.

Bank of America spokesman Scott Silvestri could not be reached for comment Monday.

On a conference call Tuesday with the consumer and labor groups, current and former Bank of America employees will argue that banks' reliance on fees and high interest rates contributed to the credit crisis. They will call for reforms that target the consumer end of the banking industry, even as the Obama administration continues to promote its plan for top-level regulatory reform.

Retail banks must change fees and incentives to eliminate "the current sell anything culture," Lerner said. He said employees need whistleblower protection so they can alert regulators to risky bank practices occurring at the retail level.

That policy might have helped Christopher Feener, a 15-year veteran of the credit card industry who worked for MBNA and Bank of America, which absorbed MBNA in 2006. Feener said he and his colleagues observed routine violations of the federal Fair Debt Collection Practices Act and disclosure rules, but could not speak out for fear of reprisal.

Feener lost his job in September shortly after his wife — another former bank employee — discussed participating in an expose on network television.

"Collecting money was always a hard job, but in the last two years it just got crazy," Feener said. He said his team was forced to call borrowers' neighbors, falsely threaten legal action and pressure borrowers to bounce checks or default on other loans in order to meet credit card payments.

Bounced checks allowed the bank to extend collection periods for a month, so they had to report fewer loan losses and could consider more accounts active, he said.

Feener said he sensed the financial crisis as early as 2007, as customers started defaulting on credit cards without making a single payment.

Also on Tuesday's call will be Rep. Keith Ellison, D-Minn., who hopes to push the proposed regulations through the House Financial Services Committee.