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June 18, 2009

The Honorable Darrell E. Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Response to the Letter of June 2, 2009

Dear Congressman Issa:

On behalf of Bank of America Corporation (the "Bank"), I am writing in response to your letter of June 2, 2009, to Kenneth D. Lewis. At the outset, I wish to assure you that the Bank has taken your request very seriously. Your letter seeks bank records with respect to customers who participated in Countrywide's VIP program, sometimes also called the "Friends of Angelo" program. As you probably know, Bank of America promptly discontinued this program upon its acquisition of Countrywide in 2008.

Unfortunately, pursuant to the Bank's practice regarding such requests, and based upon the applicable law, the Bank is unable to provide the requested information at this time. The Bank's practice has been to provide confidential customer information only pursuant to subpoena, whether that request comes from law enforcement, Congress, or other governmental bodies. I should note that the Bank routinely cooperates with law enforcement and investigating committees, providing customer related information pursuant to subpoena.

This practice comports with applicable law. By statute (Gramm-Leach-Bliley Act, "GLBA") and implementing regulations,[1] financial institutions are prohibited from disclosing non-public personal information to nonaffiliated third parties if the customer has elected to restrict such sharing. In order to share customer data with nonaffiliated third parties, financial institutions must provide the customer with a privacy notice and the means and opportunity to opt out of allowing the financial institution to share their data with such third parties.

[1] 15 U.S.C. 6802(a) and 12 CFR 216.10.

One of the exceptions to this general rule is when the sharing takes place to comply with validly issued legal process.[2] Thus, if a Committee issues a valid congressional subpoena for information, Bank of America would have a valid basis to produce information. As noted above, this has been the basis of the Bank's production of information to other Congressional committee/s.

In addition, some of the customers whose loan information falls within your request reside in states that limit the sharing of information. Specifically, California and other states have passed their own information privacy laws[3] that are more restrictive than the federal GLBA. For example, California's statute requires that the customer first be provided a California specific privacy notice and that the customer must affirmatively opt-in or consent to their data being shared with third parties. Like federal law, California law provides an exception in order to comply with validly issued legal process, such as a subpoena.

There are additional state law prohibitions on providing customer specific information. These prohibitions generally allow production pursuant to a validly issued subpoena.

Finally, the Right to Financial Privacy Act[4] ("RFPA") prevents the federal government from gaining access to customer information absent satisfying certain requirements. As with other federal and state laws, the RFPA also includes an exception for providing customer information pursuant to certain subpoenas.[5] While it is a threshold question whether a Congressional request is covered by the RFPA, it is appropriate under any reading of the statute that the Bank only disclose customer information consistent with the spirit of the RFPA – that is, by producing information pursuant to a validly issued subpoena.

In addition to such legal and statutory considerations, maintaining the privacy of its customers is of the utmost concern to the Bank. The Bank does not believe it is appropriate to divulge confidential bank records other than through power of subpoena or as otherwise required by law. The potential for abuse here is significant, and the Bank cannot put itself in the position of having to decide which requests are appropriate and which are not. Therefore, the Bank's practice relies on process: the presence or absence of a subpoena or other legal compulsion. This seeks to protect the privacy rights of the Bank's customers while assisting the government in its investigations.

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[2] 12 CFR 216.15(a)(7)(ii) and/or (iii).

[3] *E.g.*, California Financial Information Privacy Act, Financial Code Section 4050, *et seq.*

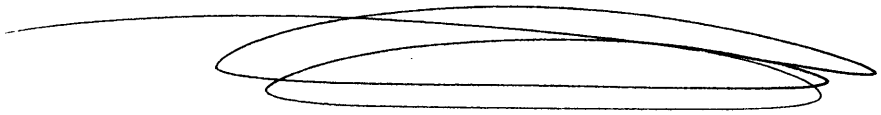
[4] 12 U.S.C. 3401, *et seq.*

[5] 12 U.S.C. 3402(2) and 12 U.S.C. 3402(4).

To the extent that you would like to learn more about how Countrywide's VIP program operated generally (without the Bank disclosing customer specific information), I would be pleased to arrange such a briefing.

Please let me know if you wish to discuss any of the matters covered in this letter, or if you have any other questions.

Sincerely,



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