

**ACCE / Occupy Bernal/Noe Statement Supporting SFERS Discriminatory Lending Motions  
May 8, 2013 (time duration 12:30)**

***Introduction (0:20)***

We thank Commissioner Cohen for trying to schedule a May 29<sup>th</sup> SFERS Retirement Board meeting to discuss discriminatory lending policy. Since public comment is quite limited at these meetings, however, we'd like to share some responses to the April 10<sup>th</sup> meeting with the Commissioners at this meeting today.

***SFERS Social Investment Policies (0:38)***

The San Francisco Employee Retirement System (SFERS) has Social Investment Policies that require the Commissioners of the Retirement Board to consider discriminatory lending as a factor in determining investment policy as long as it doesn't interfere with the Board's fiduciary responsibility of producing investment returns for the exclusive benefit of plan participants. In fact, anything SFERS can do to influence the banks to stop illegal, discriminatory, and predatory lending will almost certainly increase the value of those investments and therefore benefit SFERS plan participants.

***Discriminatory Lending by Companies in Which SFERS Invests (0:52)***

Mortgage loan servicers like Bank of America, Wells Fargo, and JP Morgan Chase, among others, engaged in discriminatory lending practices, according to reputable sources like the U.S. Department of Justice, the Office of the Controller of the Currency of the U.S. Treasury, the Federal Trade Commission, the U.S. Department of Housing and Urban Development, and the Center for American Progress. While these banks deny any intent to engage in discriminatory lending, their practices led to the two largest discriminatory lending settlements in U.S. history: the \$335 million Bank of America settlement was approximately 50 times larger than any prior discriminatory lending settlement and the \$234.3 million Wells Fargo settlement was approximately 35 times larger than any prior discriminatory lending settlement.

***Did the Banks Engage in Discriminatory Lending? (1:05)***

Because the cases brought by the U.S. Department of Justice were settled without a verdict, the courts did not rule on whether or not Bank of America and Wells Fargo engaged in discriminatory lending. But both banks determined which of their mortgage loan customers had received discriminatory loans according to a formula they agreed to as part of their settlement. The banks then made payments to these discriminatory lending victims through third-party companies paid to handle the settlement funds. It is disingenuous to maintain that Bank of America and Wells Fargo did not engage in discriminatory lending since many reputable government and non-governmental sources agree that they did engage in discriminatory lending, even though they of course did their best to maintain their images and their brands during the court proceedings. The U.S. Department of Justice, wisely or not, decided to focus on obtaining compensation for victims of discriminatory lending practices, rather than engaging in an expensive and lengthy court battle over so-called facts determined by the court.

***What Effects Did the Banks Discriminatory Lending Practices Have? (0:48)***

The banks' discriminatory lending practices impacted some plan participants directly through economic burdens sustained from subprime loans, rather than prime loans offered to similar borrowers based on their race, national origin, or disability status. These practices contributed to the worldwide financial meltdown with significant impacts on the entire economy and billions of dollars in negative impact on the SFERS fund. As Commissioner Stansbury has pointed out, the SFERS fund is only now recovering several years later. The housing crisis – fueled by discriminatory and predatory lending – has required San Francisco to contribute millions more to the SFERS fund, impacting not only plan participants but all San Franciscans who pay property taxes.

### ***What is Wells Fargo's Record Regarding Foreclosures? (1:42)***

Wells Fargo's letter provided to SFERS on April 10, 2013, states that Wells Fargo has 25,000 mortgage holders in San Francisco “98% of whom are current on their mortgages or have missed only one payment”. However, this does not take into account how many prior Wells Fargo mortgage holders have already lost their homes due to Wells Fargo's predatory and discriminatory lending policies. Nor does it account for the 2% – or 500 households – that Wells Fargo currently counts as delinquent and therefore facing foreclosure and eviction in San Francisco.

Wells Fargo writes “Since 2009, for every one customer that has gone to foreclosure sale we have helped or are in the process of helping three others through modifications or other workout options”. What does Wells Fargo mean by “other workout options”? In the information Wells Fargo provides on page 2, that seems to mean a short sale or a deed in lieu of foreclosure by which homeowners still lose their homes and any future equity or appreciation in their property. What does Wells Fargo mean by “in the process of helping”... does that mean that those homeowners may still end up at foreclosure auction if the “process” doesn't work?

Wells Fargo writes “**when customers choose to work with us, we help 7 of 10 avoid foreclosure**”. Well, what about the other three in ten? They presumably go into foreclosure.

Wells Fargo seems to confirm ACCE's statement that Wells Fargo is #1 not only in loan originations in San Francisco, but also in foreclosures and related evictions.

### ***What About Wells Fargo's Home Preservation Workshops? (0:23)***

Some of the ACCE Foreclosure and Eviction Fighters have attended Wells Fargo Home Preservation Workshops and they report that the workshops were sparsely attended and unhelpful. In fact, in at least one case, so few people attended that the press could only interview ACCE Foreclosure and Eviction Fighters about the event. And Wells Fargo is bringing up information that is not really relevant to its record of discriminatory lending here.

### ***What About Wells Fargo's Diverse Workforce? (0:21)***

Wells Fargo also seems to think that mentioning the diversity of its employees is relevant with respect to its record in providing discriminatory loans to African-American and Latino borrowers. If you have African-American and Latino employees offering discriminatory loans to customers, that doesn't really make it better for those victims of discriminatory lending, does it?

### ***Has Wells Fargo Discontinued Subprime Lending? (1:30)***

On the top of page 3, Wells Fargo says it is offering fewer subprime loans, which is a hopeful sign... but Wells Fargo admits that it has participated and is still participating in the market for such loans even after settling with the U.S. Department of Justice for its discriminatory lending practices. Even if Wells Fargo only sold 29 new households in 2011 and 14 new households in 2012 on subprime loans, that still means 43 new households facing these predatory loans and a slew of households still dealing with them from originations that took place prior to 2011 without a clear commitment from Wells Fargo to make things right for these homeowners.

The three paragraphs on page 3 that detail Wells Fargo's settlement with the U.S. Department of Justice are particularly telling. Wells Fargo apparently still won't stand up and admit that its lending policies and financial incentives to employees and mortgage brokers led to a pattern of discriminatory lending practices here in San Francisco and in numerous markets nationwide.

Even if it were not possible to prove that “any Wells Fargo employee intentionally discriminated on the basis of race or national origin” and even if Wells Fargo hides behind language such as “we vigorously deny such claims”, the fact remains that Wells Fargo itself identified 3,990 African-American and Latino borrowers that should have qualified for prime loans but were offered more expensive subprime loans instead.

#### ***What About the Banks Charitable Donations and Employee Volunteering for Good Causes? (0:19)***

While admirable, charitable donations to and employee volunteering for good causes in the community do not impact the role the banks have played in discriminatory lending and therefore should not be considered in determining SFERS discriminatory lending policy and investment practices.

#### ***Wells Fargo Executives' Invitations to Meet Foreclosure and Eviction Fighters (0:41)***

Wells Fargo executives participating in the April 10, 2013, SFERS Retirement Board meeting told Foreclosure and Eviction Fighters that they would be happy to meet to discuss how to resolve issues related to Wells Fargo mortgage loans and urged us to “talk with us early and often”. However, when we emailed seven of these executives a week ago to take them up on their invitation to meet with us, not one of the Wells Fargo executives even replied to our email. Two of them we couldn't invite until Monday because it took that long to even find an email address for them, but they haven't replied either. This unresponsiveness is typical of how Wells Fargo treats its customers in foreclosure.

#### ***New York Attorney General Suing Wells Fargo, Bank of America for Violation of Settlement (0:52)***

At the April 10<sup>th</sup>, 2013, meeting of the SFERS Retirement Board, Commissioners Stansbury, Makras, and Driscoll urged us to rely on legislators and regulators to handle the mortgage lending abuses of the banks. But each week we learn of new financial exposure that SFERS faces from investing in predatory lenders. On Monday, New York Attorney General Eric Schneiderman announced plans to sue Bank of America and Wells Fargo due to violations of the \$26 billion National Mortgage Settlement brokered by the Attorneys General from 49 states. Since October 2012, Mr. Schneiderman's office has documented 210 separate violations involving Wells Fargo and 129 involving Bank of America. Other state attorneys general are engaging with the settlement monitor and considering further lawsuits.

#### ***Commissioner Makras Should Recuse Himself Based on Bank of America Stock Investment (0:34)***

At the April 10<sup>th</sup>, 2013, meeting of the SFERS Retirement Board, Commissioner Victor Makras disclosed that he owns \$11,000 of Bank of America stock. In declining to recuse himself from the meeting, he said “I don't believe that whatever decision comes out today will materially affect my investment or will materially affect Bank of America's profits or losses, therefore I will proceed”. We feel that Commissioner Makras should recuse himself if he owns any amount of stock in the companies engaged in discriminatory lending.

#### ***Commissioner Makras and the Discriminatory Lending Practices of Other Banks (0:41)***

Commissioner Makras said at the April 10<sup>th</sup> meeting that SFERS should not single out three banks. We see no reason to oppose an amendment to the SFERS discriminatory lending motions to include all the loan servicers. However, it is important to note that, while other mortgage loan servicers also engaged in discriminatory lending practices, the biggest offenders according to U.S. Department of Justice prosecutions have been Bank of America and Wells Fargo. JP Morgan Chase likely follows not far behind. That is a good reason why the top three foreclosing banks were included in the motions, rather than the more than a dozen known to have engaged in illegal and predatory lending of some kind.

***Commissioner Makras and the Risk of Consumer Savings at Banks (0:55)***

At the April 10<sup>th</sup> meeting, Commissioner Makras pitted the banks' response to homeowners facing foreclosure against the responsibility banks have to consumers who entrust their savings to banks. This argument is a red herring because the FDIC ensures consumer deposits in bank savings accounts, certain retirement accounts, trust accounts, and employee benefit accounts up to \$250,000 per account owner and account type. So, only account owners who put more than \$250,000 into one bank account are at any risk, and they could easily mitigate that risk by spreading their deposits across multiple banks.

***Support the Level I Motion on Discriminatory Lending (0:28)***

SFERS Commissioners should support the Level 1 motion on discriminatory lending, not only because it is in line with longstanding SFERS policy and will not damage and may increase the value of the fund to plan participants, but also because it simply requires SFERS participation in shareholder meetings and the resolutions presented there to urge mortgage loan servicers to uphold the law in their lending practices and to engage in more effective corporate management.

***Support the Level II Motion on Discriminatory Lending (0:21)***

SFERS Commissioners should support the Level II motion on discriminatory lending, not only because it is in line with longstanding SFERS policy and will not damage and may increase the value of the fund to plan participants, but also because it simply requires SFERS participation and cooperation with others in urging mortgage loan servicers to uphold the law in their lending practices.