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November 08, 2013

**VIA CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Bank of America Corporation Corporate Benefits Committee

Transamerica Square

401 N. Tryon Street, NC1-021-07-07

Charlotte, NC 28255

Re: Ernest M. Frietze Annuity Reduction

SSN: XXX-XX-6159

DOB: 11/24/1944

File Number W047701-03JUL13

Dear Bank of America Corporation Corporate Benefits Committee:

The Western States Pension Assistance Project operates through Legal Services of Northern California. Our office provides legal assistance to individuals in matters concerning pension and retirement savings plans. I am writing on behalf of my client, Ernest M. Frietze, and have enclosed an authorization for your convenience.

Mr. Frietze is a participant of the Bank of American Pension Plan (the "Plan"). In a letter dated July 9, 2013 (the "Letter," enclosed) the Plan explained that it had "determined that an error was made" in calculating Mr. Frietze's pension benefit in 2009. It stated the Plan would reduce Mr. Frietze's monthly benefit from $787.60 to $0.00. As

a result of the alleged error and the Plan’s failure to detect it, the Letter concluded that Mr. Frietze was overpaid a total of $34,654.40 since 12/01/2009.

To justify the reduction to Mr. Frietze's benefit, the Letter offered only that "a recent audit" showed Mr. Frietze's benefit "included grandfathered benefit components that had been paid out in a previous distribution." The Letter did not cite to pertinent Plan provisions upon which the determination was made, nor did it provide Mr. Frietze with supporting documentation demonstrating the alleged previous distribution or findings of the audit, nor did it provide to Mr. Frietze a description of the Plan's procedure for providing a full and fair review.

The underlying determination that gave rise to the Letter constituted an "adverse benefit determination." The

Employee Retirement Income Security Act of 1974, as amended ("ERISA") and Department of Labor

Regulations specify the requirements of adverse benefit determinations. More specifically, 29 C.P.R. § 2560.503-

1(m)(4) defines an "adverse benefit determination" as, among other things, "a denial, reduction…or a failure to provide or make payment (in whole or in part) for, a benefit." Adverse benefit determinations must be in writing.

29 U.S.C. § 1133. The Department of Labor interpreted this section of ERISA to require plan administrators to set

forth in writing: (1) the specific reason or reasons for the determination; (2) reference to pertinent plan provisions on which the determination was made; (3) a description of any additional information necessary to perfect a claim; and (4) a description of the pension plan's review procedure, applicable time limits, and a statement to being suit under section 502(a) of ERISA. 29 C.P.R. § 2560.503-1(g).

The Plan's decision to reduce Mr. Frietze's monthly benefit from $787.60 to $0.00 per month was an adverse benefit determination because it constituted a "reduction" of Mr. Frietze's benefit, an unreasonably delayed,



retroactive "denial" as to his original claim in 2009, and/or a "failure to provide or make payment" for his benefit. Because the Letter failed to meet the minimum requirements for adverse benefit determinations, the Plan must perfect its notification to Mr. Frietze. Please prepare for Mr. Frietze a notice of the adverse benefit determination that is compliant with federal law and send it, attention to me (Ryan Gronsky), to:

Western States Pension Assistance Project- Senior Legal Hotline

444 North 3rd Street, Suite 312

Sacramento CA, 95811

In addition to the above request, and derived from Mr. Frietze's right to review information connected to the adverse benefit determination, I further request on Mr. Frietze's behalf copies of all documentation the Plan used in making its determination, including, but not limited to, the following:

• A complete copy of Mr. Frietze's pension file, including benefit election forms identifying the "grandfathered benefit components" referenced in the Letter, any documents identifying the amount of and date when such "grandfathered benefit components" were allegedly distributed to Mr. Frietze, and any other documents connecting Mr. Frietze to a previous distribution of "grandfathered benefit components."

• A copy of the audit including portions thereof which reveal and explain the supposed error in Mr.

Frietze's benefit.

• Copies of internal guidelines, directives, regulations, Plan interpretations, or any written explanations concerning the Plan's audit procedures, including how often such audits are to be conducted, and to what level of detail such audits are to be conducted

• A statement of when the Plan most recently completed a previous audit of this nature, and copies of the introductory pages of that audit confirming the timing and nature of the audit that was completed most previously to the one that allegedly detected the error at issue here.

• A current Summary Plan Description and Summary of Material Modifications.

• Complete copies of any Plan Documents containing provisions upon which the Plan relied, including a copy of the Plan Document in effect on Mr. Frietze's Last Hour of Covered Service under the Plan, as well as any previous versions of the Plan if they were so relied upon.

Please send the requested information attention to me at the address indicated above. If the Plan discovers that the above-requested documents do not support its decision to reduce Mr. Frietze's benefit, Mr. Frietze demands that his benefit be reinstated retroactively to the original date of reduction, and that the Plan send written confirmation to that effect. Thank you for your attention to this matter.

 Sincerely,

Ryan Gronsky

Staff Attorney, Western States Pension Assistance Project

Enclosures: Ernest Frietze Authorization, Letter. Cc: Ernest M. Frietze

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