



**Issue Date: 07 December 2012**

CASE NO.: 2012-SOX-00001

*In the Matter of:*

**EILEEN FOSTER,**  
Complainant,

vs.

**BANK OF AMERICA CORP. AND  
COUNTRYWIDE FINANCIAL CORP.,**  
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT**

This claim arises under the whistleblower protection provisions of the Sarbanes-Oxley Act (“the Act”), 18 U.S.C. § 1514A (2006). It was set for trial on October 22, 2012. On October 9, 2012, the parties informed this Office that they had settled, and I vacated the trial.

On November 30, 2012, the parties submitted a proposed “Confidential General Release and Settlement Agreement” (“the Agreement”) for approval. 29 C.F.R. § 1980.111(d)(2)-(e). The parties also jointly moved to seal the original agreement and file a redacted version for the public file. They requested that the Department notify them if there is a request for disclosure of the original agreement under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I have reviewed the proposed settlement agreement and find it fair and reasonable. It adequately protects Ms. Foster, and none of the terms is against the public interest. The proposed settlement therefore is APPROVED, and the parties are ORDERED to comply with its terms.

Turning to the motion to seal,<sup>1</sup> the parties assert that the material they propose to redact is exempt from FOIA disclosure as confidential commercial or financial information (Exemption 4). It is at the least arguable that the redacted language in fact is exempt. Accordingly, the motion to seal is GRANTED. The original settlement agreement is ordered sealed. The redacted version is ordered to be filed.

The parties are advised that this ruling on the motion to seal is not a final decision of the Secretary. The Secretary’s decision whether to exercise her discretion to assert an exemption is

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<sup>1</sup> See 29 C.F.R. §§ 18.56 and 70.26.

reserved to another agency of the Department of Labor. *See Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB March 27, 1997). That agency will not decide the matter until and unless a third party makes a FOIA request. At that time, if it occurs, the parties will be entitled to pre-disclosure notification from the Department and may state their objections. *See* 29 C.F.R. §70.26.

SO ORDERED.

STEVEN B. BERLIN  
Administrative Law Judge