



David A. Lee, Chief FOIA Officer  
 FOIA Requester Service Center  
 400 7th Street, SW  
 8th Floor  
 Washington, DC 20024

October 1, 2013  
 Via Email and Certified Mail

Re: Freedom of Information Act Request  
*Expedited Processing Requested*

Dear FOIA Officer,

The Center for Popular Democracy (CPD), Action United Pennsylvania, Alliance of Californians for Community Empowerment, Alliance for a Just Society, City Life, Colorado Foreclosure Resistance Coalition, Home Defenders League, Housing and Economic Rights Advocates, New Jersey Communities United, New York Communities for Change, and SEIU Healthcare Illinois-Indiana submit this expedited Freedom of Information Act (FOIA) request for records in the possession of the Federal Housing Finance Agency (FHFA). Requesters submit this request pursuant to the FOIA, 5 U.S.C. § 552, and implementing regulations 12 CFR §1202.1 *et seq.*

In the wake of the 2007 housing market collapse, economists from across the political spectrum identified mortgage debt as one of the prime obstacles to strong economic growth and recommended that the government implement a program of widespread mortgage principal reduction.<sup>1</sup> The Secretary of the Treasury has called for FHFA to adopt principal reduction<sup>2</sup> and

<sup>1</sup> Martin Feldstein, *How to Stop the Drop in Home Values*, NEW YORK TIMES, Oct. 12, 2011; Paul Krugman, *Fire Ed DeMarco*, NEW YORK TIMES, July 31, 2012.

<sup>2</sup> Letter from Secretary Geithner to Acting FHFA Director DeMarco on the Principal Reduction Alternative (PRA) Program, July 31, 2012.

the Congressional Budget Office has estimated that such a program could save tax payers \$2.8 billion.<sup>3</sup> Despite this widespread consensus, the FHFA has refused to implement a principal reduction program on loans owned by Fannie Mae or Freddie Mac.

In the face of continued federal inaction and a continued foreclosure crisis that is crippling millions of families' budgets and the national economy, a set of municipalities have begun to explore local mortgage principal reduction solutions.<sup>4</sup>

The City of Richmond, CA has been one of the hardest hit municipalities in the housing crisis. Plummeting sale prices have resulted in a persistently high rate of underwater mortgages. Today, approximately 51 percent of mortgages are underwater in Richmond, and the average underwater homeowner owes 45 percent more than their home is worth.<sup>5</sup>

On July 31<sup>st</sup>, 2013, Richmond made offers to purchase 624 underwater mortgages from the current servicers and trustees in order to refinance the mortgages. The city offered prices per loan determined by an independent assessor to be the current fair market value for these loans. The city indicated its willingness to negotiate, in an effort to reach an agreed upon sale price. Richmond was also clear that it would consider using its eminent domain authority if the current loan holders refused to sell the loans voluntarily.

On September 10<sup>th</sup>, 2013, the Richmond City Council voted to move forward with the implementation of their Local Principal Reduction program, which may end up utilizing the municipal power of eminent domain to achieve widespread debt reduction.<sup>6</sup> Richmond's program seeks to purchase underwater mortgages at fair market prices and refinance these loans at affordable rates so that residents will be able to stay in their homes.

The FHFA recently issued a statement threatening to "initiate legal challenges" against Richmond or other cities that use eminent domain to reduce mortgage principal and to issue regulations prohibiting Fannie Mae and Freddie Mac from re-purchasing mortgages on homes in such cities.<sup>7</sup> Not only has the FHFA refused to implement principal reduction on mortgages that it owns, but it is now attempting to block the restructuring of loans owned by private label securities.

Records indicate that there has been sustained contact about this proposal between the private banking industry and the highest levels of FHFA leadership.<sup>8</sup> These communications, and the FHFA's recent efforts to block an eminent domain solution, have reinforced the public's concern that the FHFA is advancing the interests of Wall Street firms at the expense of the nation's homeowners.

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<sup>3</sup> Jacob Gaffney, Widespread principal reductions could save taxpayers \$2.8 billion, HOUSING WIRE, May 1, 2013.

<sup>4</sup> Lawrence Summers, *Why the housing burden stalls America's economic recovery*, FINANCIAL TIMES, Oct. 23, 2011 ("Surely there is a strong case for experimentation with principal reduction strategies at the local level").

<sup>5</sup> Mike Konczal, *Is Richmond's mortgage seizure scheme even legal?*, WASHINGTON POST, Sep. 21, 2013 (concluding that Richmond's use of eminent domain authority is legal).

<sup>6</sup> Jim Christie, *California city backs plan to seize negative equity mortgages*, REUTERS, Sep. 11, 2013.

<sup>7</sup> Press Release, Federal Housing Finance Agency, *FHFA Statement on Eminent Domain*, Aug. 8, 2013.

<sup>8</sup> E-mail from Richard Dorfman, Managing Dir. and Head of Securitization, SIFMA, to Edward DeMarco, Acting Director, FHFA (July 10, 2012, 14:00) (on file).

There has been widespread interest in the continued foreclosure crisis, the debate over federal principal reduction proposals, and the efforts of municipalities to find solutions for their local community. Members of Congress have submitted legislation regarding local eminent domain solutions. Principal reduction was a central topic of the recent Senate Banking Committee hearing considering the nomination of Mel Watt to lead the FHFA.<sup>9</sup> Given this on-going public and Congressional debate, there is great urgency to inform the public about the reasons for the FHFA's objections to Richmond's local principal reduction plan. It is imperative that community members, local elected officials, federal officials, and the media immediately gain a full and complete understanding of the priorities and opinions of high-ranking FHFA officials, as expressed to members of the financial industry.

## I. REQUEST FOR INFORMATION

We request disclosure of all records<sup>10</sup> in your possession created since January 1<sup>st</sup>, 2012, pertaining to the use of eminent domain to purchase mortgages.

In particular, we seek the following:

- 1) All documents related to any and all communications or meetings between FHFA leadership and representatives of the Securities Industry and Financial Markets Association (SIFMA), the American Securitization Forum (ASF), the American Bankers Association (ABA), and the Association of Institutional Investors (AII) pertaining to the use of eminent domain to purchase mortgages. This includes correspondence, phone messages, emails, calendar entries, and notes or memoranda describing any such meetings.
- 2) All documents related to any and all communications or meetings between FHFA leadership and representatives of the California Mortgage Bankers Association (MBA), the California Mortgage Bankers Association (MBA), the Investment Company Institute (ICI), the Financial Services Roundtable (FSR), the National Association of Home Builders, DoubleLine, BlackRock, and the Pacific Investment Management Company (PIMCO) pertaining to the use of eminent domain to purchase mortgages. This includes correspondence, phone messages, emails, calendar entries, and notes or memoranda describing any such meetings.
- 3) All documents related to any and all communications or meetings between FHFA leadership and representatives of Wells Fargo Bank, Deutsche Bank, Bank of America, Ally Bank, Chase Bank, and Citigroup, pertaining to the use of eminent

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<sup>9</sup> Ely Portillo, *Watt faces pointed questions at Senate hearing*, CHARLOTTE OBSERVER, June 27, 2013.

<sup>10</sup> The term "records" as used herein includes all records preserved in written or electronic form, including but not limited to: calendar entries, correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, studies, and text messages. To the extent that the agency chooses to redact identifying information of individuals, we request that individuals be identified with an alphanumeric code so that multiple records related to the same individual can be recognized as such.

- domain to purchase mortgages. This includes correspondence, phone messages, emails, calendar entries, and notes or memoranda describing any such meetings.
- 4) All documents related to any and all communications or meetings between FHFA leadership and any other firms or trade groups, pertaining to the use of eminent domain to purchase mortgages. This includes correspondence, phone messages, emails, calendar entries, and notes or memoranda describing any such meetings.
  - 5) All documents, including correspondence, phone messages, emails, calendar entries, and notes or memoranda of describing meetings, regarding the City of Richmond's offer to buy underwater mortgages from residents.
  - 6) Any studies or empirical analyses of the impact of eminent domain or principal reduction proposals relied upon by FHFA in support of the assertions and positions set forth in the General Counsel's August 7<sup>th</sup>, 2013 Memorandum titled "Summary of Comments and Additional Analysis Regarding Input on Use of Eminent Domain to Restructure Mortgages" and the FHFA's August 8<sup>th</sup>, 2013 "Statement on Eminent Domain."

We request that you search the following FHFA offices and all relevant employees: Acting Director, Chief Operating Officer (COO), Deputy Director for Enterprise Regulation, Deputy Director for Housing Mission and Goals, Deputy Director for Supervision Policy and Support, Deputy Director for Office of Strategic Initiatives, and General Counsel.

## II. REQUEST FOR EXPEDITED PROCESSING

We seek expedited processing. Title 5 U.S.C. §552(a)(6)(E) provides for expedited processing of requests for information in cases in which the person requesting the records demonstrates a compelling need. The Federal Housing Finance Authority regulations state that FOIA requests are entitled to expedited processing when information requested involves, "An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;" or "A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government's integrity, affecting public confidence." 12 CFR §1202.10(a)(2,4).

Expedited processing is critical. As demonstrated by the news coverage cited below, there is widespread and exceptional media interest in the use of eminent domain to purchase and refinance mortgages. In addition, the practices of the FHFA and Acting Director Ed Demarco, and the documented close relationship between the FHFA and major Wall Street firms, raise important questions about the government's integrity, which would affect public confidence. Additionally, there is strong evidence that SIFMA has engaged in illegal redlining practices and that the FHFA's threats to stop repurchasing mortgages originating in Richmond violate fair housing law. Expedited processing should therefore be granted pursuant to 12 CFR §1202.10(a)(2) and 12 CFR §1202.10(a)(4).

1. There is widespread media interest and there exist possible questions about the Federal government's integrity

There can be no doubt that the housing crisis, the proliferation of underwater mortgages, the FHFA's response to the crisis, and the proposal that municipalities use eminent domain to achieve widespread principal reduction have all received tremendous media attention. The subject has received front-page, "above the fold" coverage in *The New York Times*, followed by a flurry of coverage in other national outlets.<sup>11</sup>

In addition, the FHFA's actions and the actions of Ed DeMarco raise questions about the Federal Government's integrity, affecting public confidence. FHFA took the remarkable step of threatening to initiate legal action against any jurisdiction that seeks to protect homeowners by sanctioning the use of eminent domain to restructure mortgages.<sup>12</sup> While this position might benefit particular firms in the financial industry, it seems starkly at odds with the agency's "obligation[]" to "assist[] homeowners in trouble,"<sup>13</sup> and may violate federal fair lending law and overstep FHFA's statutory authority.

a. *Existing records of correspondence between FHFA and SIFMA*

There are serious questions as to whether the FHFA as an agency and DeMarco as Acting Director have stepped outside the bounds of their mandated roles. The FHFA has released records of sustained e-mail contact between Ed DeMarco, Acting Director of FHFA, and Richard Dorfman, a Managing Director of the Securities Industry and Financial Markets Association (SIFMA), regarding the prospect of local eminent domain solutions<sup>14</sup>

FHFA's role as an independent and regulatory body is potentially compromised by DeMarco's intimate relationship with those within the private banking industry. His tenure at FHFA has been marked by continued criticism of his close relationship to private banks and his equally absent relationship to struggling homeowners. His refusal to support debt reduction has resulted in public calls for his removal.<sup>15</sup>

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<sup>11</sup> See, e.g., Shaila Dewan, *A City Invokes Seizure Laws to Save Homes*, NY TIMES, July 29, 2013; Alejandro Lazo, *Richmond adopts eminent domain mortgage plan*, LA TIMES, July 30, 2013; Peter Dreier, *Wall Street Lobbyists Nervous As Cities Use Eminent Domain to Protect Homeowners*, THE HUFFINGTON POST, July 30, 2013; *Richmond Threatens Eminent Domain To Address Foreclosure Crisis*, CBS SAN FRANCISCO, July 30, 2013; Dan Levy and Jody Shenn, *Richmond Escalates Eminent Domain Plan With Loan Offers*, BLOOMBERG NEWS, July 30, 2013; Kate Berry, *Calif. City Threatens to Use Eminent Domain with Underwater Mortgages*, AMERICAN BANKER, July 30, 2013; Carolyn Said, *Richmond's pioneering eminent-domain threat*, SAN FRANCISCO CHRONICLE, July 31, 2013; Nick Timiraos, *Fannie, Freddie Regulator Threatens Action on Eminent Domain*, WALL ST. J., Aug. 8, 2013; Margaret Chadbourn, *Freddie Mac may sue California city on eminent domain loan seizures*, REUTERS, Aug. 7, 2013; Ilyce Glink, *Millions of homeowners still underwater, despite price gains*, CBS NEWS, Sep. 12, 2013.

<sup>12</sup> See FHFA Press Release, *supra* note 7.

<sup>13</sup> FHFA Report to Congress 2012, at page i, available at [http://www.fhfa.gov/webfiles/25320/FHFA2012\\_AnnualReport.pdf](http://www.fhfa.gov/webfiles/25320/FHFA2012_AnnualReport.pdf).

<sup>14</sup> E-mail, *supra* note 8.

<sup>15</sup> See e.g. Paul Krugman, *Debt, Depression, DeMarco*, NYTIMES, Aug. 2, 2012; Bonnie Kavoussi, *Van Jones: Firing FHFA Chief Ed DeMarco Could Be 'The Biggest Stimulus Program In America'*, HUFFINGTON POST, Aug. 9, 2013.

The requested records will provide substantial information that will speak to DeMarco's ability to lead the agency, the foundation for the FHFA's current position regarding the use of eminent domain, and the appropriate position for the agency to take in the future.

b. *Statutory Authority of the FHFA*

In addition, the FHFA has potentially violated federal fair lending law and overstepped its statutory authority by attempting to limit or restrict purchases of mortgages by Fannie Mae and Freddie Mac in any jurisdiction that utilizes eminent domain to seize privately held loans.

On August 8<sup>th</sup>, 2013, just one day after suit was filed against Richmond, the FHFA released a statement citing "serious concerns on the use of eminent domain to restructure existing financial contracts."<sup>16</sup>

The FHFA also listed a number of possible sanctions and/or legal actions that might be initiated against municipalities or states that implemented such a policy. The FHFA indicated that it "may take any of the following steps: initiate legal challenges to any local or state action that sanctions the use of eminent domain to restructure mortgage loan contracts that affect FHFA's regulated entities; act by order or by regulation to direct the regulated entities to limit, restrict or cease business activities within the jurisdiction of any state or local authority employing eminent domain to restructure mortgage loan contracts; or take such other actions as may be appropriate to respond to market uncertainty or increased costs created by any movement to put in place such programs."<sup>17</sup>

There is a strong legal argument that the actions listed above would both violate federal fair lending law and overstep FHFA's statutory authority. Furthermore, the threatened actions compromise the FHFA's regulatory independence and increase costs and risks for the Freddie Mac and Fannie Mae, violating the FHFA's mandate to conserve those assets for the benefit of American taxpayers.

2. The urgency to inform the public is high

Expedited processing should be granted for the independent reason that there is great urgency to inform the public about these issues and requesters are primarily engaged in disseminating information. The legality and wisdom of local eminent domain solutions is currently being debated in Congress, state legislatures, City Councils, and courtrooms all over the country. The information sought in this request would contribute to the current public and legislative debate.

a. *Federal legislation has been introduced that, if successful, would effectively destroy this program.*

The influence of the private banking industry is manifested in multiple legislative initiatives that, if successful, would restrict municipalities' constitutional power to use eminent domain to spur

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<sup>16</sup> FHFA Press Release, *supra* note 7.

<sup>17</sup> *Id.*

economic development and eliminate blight and would effectively eliminate the possibility of mortgage relief for countless homeowners.

On June 27<sup>th</sup>, 2013, there was an attempt in the U.S. Senate to attach language to the federal HUD appropriations bill that would block loans obtained through eminent domain from refinancing into an FHA product.<sup>18</sup>

On July 18<sup>th</sup>, 2013, U.S. Representative John Campbell (CA-45), introduced a bill that that would prohibit the FHA and the FHFA from making, guaranteeing, or insuring a mortgage in any community that has used eminent domain to purchase mortgages.<sup>19</sup> The legislation has the potential to halt proposals like Richmond's, despite the countless legal and economic experts who have testified to its legality and touted its ability to deliver widespread economic benefits.

Because Representative Campbell's bill has already been introduced, the legislative debate is ongoing and the requested information is extremely time sensitive.

*b. Representative Keith Ellison has also circulated a letter of support for this utilization of eminent domain.*

On August 9<sup>th</sup>, 2013, U.S. Representative Keith Ellison (MN-5) released a statement explaining that "FHFA's decision to support the lawsuit against Richmond hurts struggling homeowners in a city overwhelmed by high levels of delinquencies and foreclosures."<sup>20</sup> He and U.S. Representative Raúl Grijalva (AZ-3) are currently circulating a "Dear Colleague" letter to oppose discrimination in credit access for mortgages modified by eminent domain.

*c. Lawsuits have been filed against Richmond and Las Vegas.*

On June 19<sup>th</sup>, 2013, the city of North Las Vegas entered into an advisory agreement with Mortgage Resolution Partners, which provides private funding for local governments interested in using the power of eminent domain to purchase underwater mortgages. On June 28<sup>th</sup>, 2013, a lawsuit was filed against the City of North Las Vegas because members of its city council publicly considered the use eminent domain to acquire loans.<sup>21</sup>

On July 31<sup>st</sup>, 2013, the City of Richmond, CA made offers to purchase 624 underwater mortgages from the current servicers and trustees in order to refinance the mortgages. On September 11<sup>th</sup>, 2013, the Richmond City Council voted to move forward with the use of eminent domain to provide relief to struggling homeowners.

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<sup>18</sup> *Senate and House Committees Release Reports re Eminent Domain*, AMERICAN SECURITIZATION FORUM, July 11, 2013 at [http://www.americansecuritization.com/content.aspx?id=9593#\\_UkbtNGRgawF](http://www.americansecuritization.com/content.aspx?id=9593#_UkbtNGRgawF).

<sup>19</sup> Heide Malhotra, *California City Invokes Eminent Domain on Underwater Mortgages*, EPOCH TIMES, Sep. 17, 2013

<sup>20</sup> Press Release, *Rep. Ellison Statement on the Lawsuit Filed Against the City of Richmond, CA*, Aug. 9, 2013.

<sup>21</sup> Jon Ralson, *Federal lawsuit filed to block eminent domain scheme in North Las Vegas*, RALSTON REPORTS, June 28, 2013.

On August 7<sup>th</sup>, 2013, Wells Fargo and Deutsche Bank filed a federal lawsuit against the City of Richmond in an attempt to block the City from this contemplated use of eminent domain. While the lawsuit was dismissed for ripeness in early September, it will likely be re-filed and fully adjudicated when Richmond implements its plan.<sup>22</sup>

*d. The FHFA has taken steps to limit or restrict purchases of mortgages by Fannie Mae and Freddie Mac in any jurisdiction that utilizes eminent domain to seize privately held loans.*

As stated above, on August 8<sup>th</sup>, 2013, just one day after the banks' suit was filed against Richmond, the FHFA released a statement citing "serious concerns on the use of eminent domain to restructure existing financial contracts." The FHFA also listed a number of possible sanctions and legal actions that might be initiated against municipalities or states that implemented such a policy.

*e. The nomination of Mel Watt to replace FHFA Acting Director Ed DeMarco is currently pending*

Who is at the helm of FHFA will have a critical impact on the success of future eminent domain proposals in municipalities. Information about the DeMarco's administration's communications with the banking industry regarding this policy issue is an incredibly time-sensitive given this pending nomination.

*f. Requestors are persons primarily engaged in disseminating information*

The Center for Popular Democracy, Action United Pennsylvania, Alliance of Californians for Community Empowerment, Alliance for a Just Society, City Life, Colorado Foreclosure Resistance Coalition, Home Defenders League, New Jersey Communities United, New York Communities for Change, and SEIU Healthcare Illinois-Indiana are organizations focused on ensuring and protecting the public's legal, constitutional, and civil rights. Together, these organizations have extensive ties to communities across the country, including in Richmond, CA. These organizations work on behalf of – and serve as a resource to— struggling homeowners, and have an established responsibility to provide all available information and assistance to those people directly or indirectly affected by the mortgage crisis.

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In short, expedited processing is warranted for two independent reasons. First, there is widespread media interest in the topic of using eminent domain for principal mortgage reduction, and serious questions about the Federal Government's integrity in threatening to take legal action against jurisdictions that seek to protect homeowners through eminent domain. *See* 12 CFR §1202.10(a)(4). Second, there are on-going public and Congressional debates on this topic, as evidenced by, among other things, recently introduced legislation and the pending nomination of a candidate to serve as head of FHFA. The information sought in this request would shed light on

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<sup>22</sup> Robert Rogers, *Investors' suit to block Richmond eminent domain plan dismissed in federal court*, CONTRA COSTA TIMES, Sep. 17, 2013.



these debates and must be disclosed now to have any relevance to the debates. There is therefore urgency to this request, which is made by requesters primarily engaged in the dissemination of information.

### III. REQUEST FOR WAIVER OF PROCESSING FEES

We request a waiver of process fees. Such a waiver is appropriate for two reasons.

First, the requesters are “representative[s] of the news media.” Fees associated with the processing of this request should therefore be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The communications departments of all of the requesters regularly publish newsletters, news briefings, right to know materials, and other materials that are disseminated to the public. Their material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, and the public, for no cost. The requesting organizations regularly communicate about housing policy and news to their email listservs of over 100,000 members. The websites of the requesting organizations feature in depth information about housing policy and mortgage principal reduction. Members and staff employees of the requesting organizations frequently speak in digital and print media and make frequent public presentations at meetings and events. Due to these extensive publication activities, the requesting organizations are “representative[s] of the news media” under the FOIA and agency regulations.<sup>23</sup>

Second, a fee waiver for duplication costs should be granted for the independent reason that disclosure of the requested information is in the public interest. See 5 U.S.C. § 552(a)(4)(ii)(II)-(iii). Disclosure will further public understanding of government conduct, in particular the FHFA's policies, attitudes, and statements regarding principal reduction. The Center for Popular Democracy's communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It and the other requesting organizations are well situated to disseminate information gained through this request to the public, to affected communities, and to political and religious organizations.

If the fee waiver is denied, the requesters are prepared to pay fees up to \$500 and request to be informed of further fees that may be charged, but reserve the right to appeal a denial of fee waivers.

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We seek the determination of this request for expedited processing within 10 calendar days and the determination of this request for documents within 20 days. *See* 28 CFR §16.5(d)(4); 5 U.S.C. §552(a)(6)(A)(i).

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<sup>23</sup> Courts have found that organizations with missions similar to those of the requesting organizations are "primarily engaged in disseminating information." *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005).

If this request for information is denied in whole or in part, we ask that you justify all deletions by reference to specific provisions of the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Josie Duffy, Center for Popular Democracy, 802 Kent Ave., Brooklyn, NY, 11233 or via email at [jduffy@populardemocracy.org](mailto:jduffy@populardemocracy.org).

I affirm that the information provided supporting the request for expedited processing and the fee waiver is true and correct to the best of my knowledge and belief.

Sincerely,

Josie Duffy

*on behalf of*

The Center for Popular Democracy  
Action United Pennsylvania  
Alliance of Californians for Community Empowerment  
Alliance for a Just Society  
City Life Vida Urbana  
Colorado Foreclosure Resistance Coalition  
Home Defenders League  
Housing and Economic Rights Advocates  
New Jersey Communities United  
New York Communities for Change  
SEIU Healthcare Illinois-Indiana