



CALIFORNIA REINVESTMENT COALITION



January 12, 2017

Kevin Simpson and Deena Jih
Department of Housing and Urban Development
FOIA

RE: FOIA Request seeking expedited processing for documents that contain or memorialize HUD policies regarding borrower obligations to establish occupancy and pay taxes and insurance, data relating to foreclosure numbers overall and for OneWest Bank/CIT/Financial Freedom, and data regarding implementation of Mortgagee Letter 2015-15 establishing a path to stability for non-borrower spouses and heirs of HECM reverse mortgage borrowers.

Dear Mr. Simpson and Ms. Jih:

The California Reinvestment Coalition (CRC) and Jacksonville Area Legal Aid, Inc. (“JALA”) are submitting this Freedom of Information Act request for the Department of Housing and Urban Development (HUD) to disclose:

1. All documents containing data or estimates of the number of HECM foreclosures since April 2009, separated out for each of the fifty (50) states.
2. All documents containing data or estimates of the number of HECM foreclosures since April 2009 where the complained of, or stated reason or basis for declaring default leading to foreclosure was “non-occupancy.”
3. All documents containing data or estimates of the number of HECM foreclosures since April 2009 where the complained of, or stated reason or basis for declaring default leading to foreclosure was failure to pay or delinquency with respect to taxes and/or insurance obligations.
4. All documents containing data or estimates of the number of HECM foreclosures by OneWest, CIT, Financial Freedom and their affiliates from April 2009, separated out for each of the fifty (50) states).
5. All documents containing data or estimates of the number of HECM foreclosures by OneWest, CIT, Financial Freedom and their affiliates since April 2009, where the complained of, or stated reason or basis for declaring default leading to foreclosure was “non-occupancy.”
6. All documents containing data or estimates of the number of HECM foreclosures by OneWest, CIT, Financial Freedom and their affiliates since April 2009 where the



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- complained of, or stated reason or basis for declaring default leading to foreclosure was failure to pay, or delinquency with respect to, taxes and/or insurance obligations.
7. All documents, including any mortgagee letters, servicing guidance, servicing manual provisions or other documentation that reflect duties, timelines and/or requirements imposed by HUD on servicers regarding the manner in which borrowers must confirm their occupancy of the home. Such duties may include, but are not limited to, any requirement or incentive by HUD that servicers move to foreclose on borrowers who do not timely file a response to occupancy verification request forms or complete and return occupancy certificates.
 8. All documents, including any mortgagee letters, servicing guidance, servicing manual provisions or other documentation that reflect duties, timelines and/or requirements imposed by HUD on servicers regarding the manner in which they should contact borrowers who are delinquent or in default with respect to taxes and insurance obligations. Such duties may include, but are not limited to, any requirement, timelines or incentives imposed or provided by HUD that servicers pay back taxes and/or insurance on behalf of borrowers, and/or that servicers move to foreclose on borrowers who are behind on taxes and insurance obligations.
 9. Documents concerning the eligibility of any and all Non-Borrowing Spouses for the Mortgagee Optional Election as set forth in Mortgagee Letter 2015-15, including but not limited to the number of requests made for MOE, the number of requests that are pending, the number of requests that have been granted, the number of requests that have been denied, and the top three reasons for denial.
 10. For loans serviced by OneWest, CIT, Financial Freedom and their affiliates, documents concerning the eligibility of any and all Non-Borrowing Spouses for the Mortgagee Optional Election as set forth in Mortgagee Letter 2015-15, including but not limited to the number of requests made for MOE, the number of requests that are pending, the number of requests that have been granted, the number of requests that have been denied, and the top three reasons for denial.
 11. All documents, including any mortgagee letters, servicing guidance, servicing manual provisions or other documentation that reflect duties, timelines and/or requirements imposed by HUD on servicers regarding whether and the manner in which servicers are required or permitted to notify borrowers of their eligibility for the MOE option election as set forth in Mortgagee Letter 2015-15.

The California Reinvestment Coalition is a non-profit organization that has been advocating for fair and equal access to credit for all California communities since 1986. CRC builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. Over its 25 years, CRC has grown into the largest state community reinvestment coalition in the country with a membership of 300 nonprofit organizations working for the economic vitality of low-income communities and communities of color.



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The mission of Jacksonville Area Legal Aid, Inc. (JALA) is to provide high quality legal assistance to low-income and otherwise vulnerable persons to alleviate the circumstances and causes of poverty. For 79 years, in furtherance of its mission and vision, JALA has been alleviating poverty by providing equal access to the justice system in core areas, including: housing defense and consumer protection. As a legal services provider, it is uniquely able to use legal remedies to accomplish these goals, and offer more permanent solutions to poverty than charity alone. JALA has been on the forefront of solving many problems plaguing the poor and elderly. JALA was among the first in the nation to craft successful defenses on behalf of homeowners facing wrongful foreclosure, saving hundreds of homes in recent years.

Records Requested

In mid-August 2014, CIT Group applied to purchase OneWest Bank (OWB) and its affiliate, reverse mortgage servicer Financial Freedom (FF). The merger decision required a determination as to whether the merger applicants have served community credit needs, and whether the merger would provide a public benefit. In March 2009, OneWest purchased from the FDIC the assets of the failed IndyMac Bank and its reverse mortgage lender Financial Freedom.

CRC and Jacksonville Area Legal Aid now seek all documents containing data or estimates of the number of HECM foreclosures since 2009, for the industry as a whole, and also specifically for OneWest/Financial Freedom. Further, CRC and Jacksonville Legal Aid seek all documents and estimates relating to the number of such foreclosures that were purportedly based on the “non-occupancy” of borrowers, or the failure of borrowers to pay property tax or insurance, for the industry as a whole, as well as for OneWest/Financial Freedom.

Relatedly, requesters seek any and all documents from HUD that compel, require or encourage servicers to move to foreclose on HECM borrowers who do not comply with certain stated or unstated requirements to confirm their occupancy or to pay their property taxes and insurance within a certain time period and in a certain manner in effect from March, 2009 to the present. Finally, CRC and Jacksonville Legal Aid seek information relating to HUD’s oversight and response to the predicament of Non Borrowing Spouses. Specifically, CRC and Jacksonville Legal Aid seek documents that reflect HUD’s role in implementing Mortgagee Letter 2015-15, the initial results of this new policy in avoiding non-borrowing spouse foreclosures, the number of Non Borrowing Spouses that have in fact invoked the Mortgagee Letter in order to remain in their homes, and the extent to which servicers are implementing the Mortgagee Letter based upon servicers’ reports to HUD regarding MOE applications and approvals.

The requested documents, listed above, will further the public’s understanding of the federal government’s role in regulating the servicing of HECM reverse mortgages, and in regulating large financial institutions. We believe that HECM reverse mortgage program policies and servicing practices have resulted in thousands of foreclosure of seniors, surviving spouses, and heirs in California and Florida. This barrage of foreclosures speaks to how well financial



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institutions and federal loan programs are serving the public and certain communities. The Consumer Financial Protection Bureau's focus on servicing abuses generally, its enforcement actions relating to misleading advertising in reverse mortgage origination sales, and its proposal to include reverse mortgage loan data in the Home Mortgage Disclosure Act (HMDA) regulations provide further evidence of the governmental and public concern about these issues.

We do not believe that any FOIA exemptions apply to this request. **Please note that we are NOT seeking any personally identifiable information.**

HUD Response to this Request

In your response to this request, please specify whether: (1) you are providing all documents responsive to the request; (2) no documents exist that are responsive to the request; or (3) documents exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

Fee Status

Both CRC and JALA are nonprofit institutions. CRC advocates for fair and equal access to banking and other financial services for California's low-income and communities of color. JALA advocates for equal access to justice in all matters relating to housing and consumer protection. We are 501(c)(3) organizations for tax purposes. Accordingly, we believe we fall under the "all other requesters" category.¹

Fee Waiver

Additionally, we request a fee waiver. To qualify for a fee waiver, the requested information must be "in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester." CRC has been granted fee waivers when filing FOIA and similar requests of public entities, including by HUD.

¹ Fees for Services, 31 C.F.R. 1.7(a)(4)



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As CRC and JALA are nonprofits, the requested information is not in their commercial interest, as we have no commercial interests. Additionally, information regarding OneWest, Financial Freedom and the HECM program will contribute to the public's understanding of the operations or activities of government in light of HUD's role in supervising the HECM program. Further, this information will help the public understand the impact these institutions have had on all communities, whether the CIT/OneWest merger provides a public benefit, and what is the government's supervision philosophy with regard to the HECM program, something of crucial interest to seniors and all communities.

Further, this information will allow CRC and JALA to educate the public about how federal loan programs are serving the needs of the population. In California and Florida alone, Financial Freedom has foreclosed on thousands of seniors, surviving spouses and heirs, making this a matter of huge public importance. Nationally, we know that as of April 2015, there were over 41,000 foreclosures in the HECM program.² Anecdotal evidence suggests that the number of HECM foreclosures is quickly growing.

In fact, the plight of reverse mortgage borrowers, surviving spouses and other heirs is a matter of national importance. Several media outlets have recently covered the HECM program, the non borrower spouse issue, and the performance of Financial Freedom in particular. Special interest has been paid to a current HUD OIG investigation of Financial Freedom. With the coming of a new Administration, including the nomination of a new HUD Secretary and eventual naming of a new FHA Commissioner, the public's interest in these issues will only increase.

Since the issuance of Mortgagee Letter 2015-15, CRC has heard from Non Borrowing Spouses and their advocates with questions and concerns about implementation of the Mortgagee Letter.

This is an area of the financial system that is generally not well understood by the public. The Consumer Financial Protection Bureau came out with a report highlighting how reverse mortgage borrowers are often confused, if not misled, by this complex product. And probably an extreme few understand the regulatory framework that is meant to provide oversight of this complex product that has such an impact on the lives of senior citizens.

In fact, the Consumer Financial Protection Bureau recently took action against three reverse mortgage companies, finding they had misled the public about the reverse mortgage product. Specifically, the Consumer Financial Protection Bureau (CFPB) took action against three reverse mortgage companies for deceptive advertisements, including claiming that consumers could not lose their homes. The CFPB is ordering American Advisors Group, Reverse Mortgage Solutions, and Aegean Financial to cease deceptive advertising practices, implement systems to ensure they are complying with all laws, and pay penalties. The CFPB also previously published a June 2015 study, and accompanying advisory warning, reaffirming the risk to consumers as a result of

² See HUD Response to CRC FOIA Request at: <https://badbankmerger.com/cit-groups-financial-freedom-is-responsible-for-nearly-40-of-hecm-reverse-mortgage-foreclosures-since-april-2009/>



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deceptive and misleading reverse mortgage advertising.³

The effects of deceptive and improper reverse mortgage origination and servicing practices, especially when resulting in foreclosure on borrowers, non borrowing spouses and their families, are of huge importance to consumers, their families, and the community at large. Accordingly, the information sought by requesters in this FOIA request is of great interest to these communities, and to the country as a whole.

To be based on sound principles, and to truly promote the goals of a stable housing market and a safe and sound financial system, financial institutions and federal loan programs and their oversight must serve the public's financial interest. The information sought by CRC and JALA will undoubtedly contribute significantly to the public's understanding of the effectiveness of the federal government's role in regulating the servicing of certain HECM reverse mortgages, and whether these companies are operating in a fashion that is compliant with the law and beneficial to the families whom the product was intended to benefit.

The disclosure of the requested documents will contribute significantly to the public's understanding of government activities and operations. There is a clear nexus between the documents sought and the ability of CRC and JALA to disseminate information in order to contribute significantly to public and HECM borrower understanding of the operations, activities and role of HUD in regulating the servicing of certain HECM reverse mortgages. Information about the number of foreclosures, and the number of foreclosures instigated to purported non occupancy defaults and property tax or insurance delinquencies, will provide a clearer understanding as to why HECM borrowers may be losing their homes. Importantly, information and documents relating to any mortgagee letter or other guidance from HUD compelling servicers to move to foreclose if borrowers do not respond to form occupancy verification notices or meet certain specified obligations for dealing with tax and insurance delinquencies will clarify whether servicers are acting improperly, acting pursuant to a directive that may be improper, or are in fact compliant with applicants' mortgage contracts and stated obligations. Many servicers claim that unpublished HUD directives are the sole cause of unnecessary and prolonged foreclosures.

Information about communications and data relating to implementation of Mortgagee Letter 2015-15 will illuminate in greater detail the nature of the problem of Non Borrowing Spouses, and whether HUD's policy response is actually working. If the Mortgagee Letter is not resulting in Non Borrowing Spouses being able to retain homeownership, the FOIA request will help explain what are the main problems with the policy and the main reasons for denial. CRC believes that there currently is no public data concerning implementation of the Mortgagee Letter, except for HUD's response to CRC's prior FOIA request of 2015.

³ "CFPB Takes Action Against Reverse Mortgage Companies for Deceptive Advertising," Press Release, December 7, 2016, available at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-reverse-mortgage-companies-deceptive-advertising/>



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To the extent this FOIA request relates to OneWest and Financial Freedom, the information will shed light on broader principles around HUD's oversight of the HECM program, and implementation and success of its evolving policies regarding Non Borrowing Spouses. And further, information relating to foreclosure, and implementation concerns regarding OneWest and Financial Freedom will shed light on the extent to which government agencies share and consider such activity in the context of bank oversight.

It is worth stating again that reverse mortgages are more complex and less well understood than other mortgages. Similarly, the regulatory oversight of HECMs is probably less well understood, and therefore perhaps less effective, than the regulation of other mortgages. A growing number of people understand that the banking regulators and the new CFPB have jurisdiction over banks and "forward" mortgages. In fact, there is much public debate over new mortgage (QM) and servicing rules overseen by CFPB, generating numerous public comment letters. In contrast, HUD's oversight of HECM lenders and servicers is far from clear.

HUD information on the number of HECM foreclosures occurring on its watch, any procedures outlined for foreclosure due to purported "non-occupancy" and property tax or insurance delinquency, and how HUD deals with the Non Borrowing Spouse issue go directly to how the government operates in overseeing an important and complex financial product that has such a profound impact on our seniors and their families. All of this information is generally unknown to the vast majority of Americans. CRC and JALA hope and plan to educate the public, HECM borrowers and prospective borrowers about these matters, and can only do so if the requested documents are provided.

To this end, we will publicize the results in our newsletters and on our websites. We will also use this information in our comment letters to various administrative agencies, in representation of clients, and will likely use the information as part of media work to educate the public, regulatory agencies and policy makers regarding the plight of vulnerable residents and the need for regulators and legislators to do a better job to protect them.

For all of these reasons, a fee waiver is appropriate in this situation. We request that the fee waiver be granted, and that HUD process our request for information in an expedited fashion.



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If you have any questions regarding this request, please contact either Kevin Stein at (415) 864-3980, kstein@calreinvest.org, or Lynn Drysdale, (904) 356-8371, Ext. 306, lynn.drysdale@jaxlegalaid.org. We look forward to receiving your prompt reply to this request for fee waiver and request for documents. Thank you for your consideration of this request.

Very Truly Yours,

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