

1 Linda Lye (CA SBN 215584)  
2 llye@aclunc.org  
3 AMERICAN CIVIL LIBERTIES UNION  
4 FOUNDATION OF NORTHERN CALIFORNIA  
5 39 Drumm Street  
6 San Francisco, CA 94111  
7 Tel: (415) 621-2493  
8 Fax: (415) 255-8437

9 Rachel Goodman (*pro hac vice* pending)  
10 rgoodman@aclu.org  
11 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
12 125 Broad Street, 18<sup>th</sup> Fl.  
13 New York, NY 10004  
14 Tel: (212) 549-2500  
15 Fax: (212) 549-2654

16 *Counsel listing continued on signature page*

17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO-OAKLAND DIVISION

21 ALLIANCE OF CALIFORNIANS FOR  
22 COMMUNITY EMPOWERMENT;  
23 HOUSING AND ECONOMIC RIGHTS  
24 ADVOCATES; URBAN REVIVAL dba  
25 CITY LIFE/VIDA URBANA; THE  
26 COLORADO FORECLOSURE  
27 RESISTANCE COALITION; HOME  
28 DEFENDERS LEAGUE; NEW JERSEY  
COMMUNITIES UNITED; NEW YORK  
COMMUNITIES FOR CHANGE,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE  
AGENCY,

Defendant.

Case No.: \_\_\_\_\_

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

1 **INTRODUCTION**

2 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §  
3 552, to enforce the public’s right to information about the Federal Housing Finance Agency’s  
4 relationship with the nation’s largest financial institutions and its efforts to prevent municipalities  
5 from implementing a program to address the mortgage foreclosure crisis.

6 2. The foreclosure crisis, which began in 2008 and continues today, has devastated  
7 the national economy and the lives of millions of families across the country. In California  
8 alone, banks have foreclosed on approximately 1.7 million homes since 2008 and another 65,000  
9 California homeowners have received notice that they may soon face foreclosure. The crisis,  
10 while national in scope, disproportionately affects communities with large minority populations,  
11 like the City of Richmond, California (“Richmond”).

12 3. Because many homeowners received mortgages at the height of the housing  
13 bubble, there are huge numbers of homeowners who owe more on their mortgages than their  
14 homes are now worth, that is, they are “underwater.” Economists across the political spectrum  
15 have identified this kind of mortgage debt as one of the prime obstacles to strong economic  
16 growth and have recommended that the government implement a program of widespread  
17 mortgage principal reduction. Such a program would bring the amount of debt owed by  
18 homeowners more in line with the current value of their homes.

19 4. The Secretary of the Treasury has called for defendant Federal Housing Finance  
20 Agency (“FHFA”) to permit the entities it oversees to use targeted principal reduction in their  
21 loan modification programs. The Congressional Budget Office estimated that such a program  
22 could save taxpayers \$2.8 billion. While both homeowners and taxpayers stand to benefit from a  
23 program of principal reduction, the FHFA has declined to implement a principal reduction  
24 program on loans owned by Fannie Mae or Freddie Mac, which it oversees.

25 5. Inaction at the federal level has prompted local communities to take action.  
26 Richmond recently offered to purchase certain underwater mortgages secured by Richmond  
27 homes, indicating that it would consider the use of eminent domain if lenders refused to sell the  
28

1 loans at fair market value. After purchasing these mortgages, Richmond plans to originate new  
2 mortgages for the current homeowners on terms that reflect the actual present value of their  
3 homes.

4 6. The Richmond plan and others like it have garnered substantial news coverage.

5 7. Despite the FHFA’s mandate to maximize assistance to struggling homeowners  
6 and promote programs that reduce foreclosures, the agency responded by threatening to bring  
7 legal challenges against Richmond or any other city that were to use eminent domain to reduce  
8 mortgage principals. Plaintiffs seek to find out why.

9 8. There has been widespread interest in the continued foreclosure crisis, the debate  
10 over principal reduction, and the efforts of municipalities to find solutions for their local  
11 communities. Members of Congress have introduced legislation regarding local eminent domain  
12 solutions. Principal reduction was a central topic of the recent Senate Banking Committee  
13 hearing considering the nomination of Congressman Melvin Watt to lead the FHFA. A number  
14 of municipalities in addition to Richmond, including Irvington and Newark, New Jersey, are  
15 actively considering proposals to use their eminent domain authority to secure principal  
16 reduction. Much of the financial industry vigorously opposes these proposals.

17 9. Given this ongoing public and Congressional debate, there is great urgency to  
18 inform the public about reasons for the FHFA’s objection to principal reduction programs,  
19 generally, and to Richmond’s proposed plan, in particular. It is imperative that community  
20 members, local elected officials, federal officials, and the media immediately gain access to the  
21 information necessary to fully and completely understand the priorities and opinions of high-  
22 ranking FHFA officials, and the nature and substance of their exchanges with the financial  
23 industry. Without this information, a meaningful and informed public debate over this pressing  
24 public policy issue is impossible.

25 **PARTIES**

26 10. Plaintiff Alliance of Californians for Community Empowerment (“ACCE”) is a  
27 non-profit 501(c)(4) corporation with the mission of building power in low- to moderate-income  
28

1 neighborhoods to ensure social, economic, and racial justice. ACCE has community chapters in  
2 seven counties across California, in neighborhoods that are low- and moderate-income and  
3 predominantly Latino and African-American. ACCE's main place of business is in Los Angeles,  
4 California, with additional offices in Oakland, Sacramento, San Diego, San Francisco, and  
5 Contra Costa. ACCE uses grassroots efforts, community engagement, leadership development,  
6 and other tools to build community power and engages in multi-issue campaigns around housing,  
7 education, and health care reform. ACCE engages in the dissemination of information through  
8 door-to-door outreach and by producing and publicizing research and reports. Its reports have  
9 garnered significant media attention. *See, e.g.,* Jasmin Lopez, *Foreclosures hollow out a*  
10 *community*, CALIFORNIA HEALTH REPORT, Jan. 6, 2013; Laird Harrison, *Does Your Bay Area*  
11 *Neighborhood Have a High Wells Fargo Foreclosure Rate?*, KQED NEWS, Mar. 12, 2013; Max  
12 Pringle, *New Report Says Wells Fargo's Foreclosure Policies May Cost California Billions*,  
13 EXAMINER.COM, Mar. 15, 2013; Tony Robles, *ACCE Releases Report on Wells Fargo's Damage*  
14 *to California's Communities*, POOR MAGAZINE, Mar. 16, 2013; Abby Sewell, *Unions target*  
15 *Westfield malls over Prop. 13 tax benefits*, L.A. TIMES, Aug. 4, 2013.

16 11. Plaintiff Housing and Economic Rights Advocates (“HERA”), located in  
17 Oakland, California, is a California statewide 501(c)(3) non-profit corporation that provides legal  
18 services and advocacy centered around economic justice. HERA's mission is to ensure that all  
19 people are protected from discrimination and economic abuses, especially in the realm of  
20 housing, and focuses particularly on lower-income people, the elderly, immigrants, people of  
21 color, and people with disabilities. HERA disseminates information to the general public through  
22 its online resource center, including model legal documents, publications, reports, training  
23 videos, webinars, and legal and policy updates.

24 12. Plaintiff Urban Revival, Inc., a 501(c)(3) non-profit corporation doing business as  
25 City Life/Vida Urbana (“City Life”), is located and established in Massachusetts with the  
26 mission of fighting for racial and economic equality by building power through direct action,  
27 coalition building, education, and advocacy. City Life advocates on behalf of tenants’ rights and  
28

1 seeks to prevent housing displacement through its Post-Foreclosure Eviction Defense campaign,  
2 which focuses on keeping people facing foreclosure in their homes. The organizing model used  
3 at City Life has been replicated throughout Massachusetts, and City Life also produces multiple  
4 regional and national presentations and trainings. Its communications and organizing  
5 departments are responsible for producing resources including articles, audiovisual materials,  
6 instructional tools, reports, and other online materials to be accessible to the general public.

7 13. Plaintiff The Colorado Foreclosure Resistance Coalition’s (“CFRC”) mission is to  
8 fight the high rates of foreclosure in Colorado and assist individuals and families who face  
9 removal from their homes. CFRC is an unincorporated association of community leaders and  
10 organizers who regularly meet and work to fulfill their mission together. The coalition  
11 disseminates information to the general public about information surrounding housing,  
12 foreclosures, and other relevant facts and news.

13 14. Plaintiff Home Defenders League (“HDL”) is a project of Action for the Common  
14 Good, a non-profit 501(c)(4) corporation with its office in Washington, D.C. HDL is a national  
15 grassroots campaign to stop the removal of families from their homes and work for better  
16 policies that support homeowners while holding banks and mortgage lenders accountable. HDL  
17 partners with organizations throughout the country and disseminates information to the general  
18 public through articles, publications, and information on its website and to its 27,000 thousand-  
19 member email listserve.

20 15. Plaintiff New Jersey Communities United (“NJCU”) is a non-profit 501(c)(4)  
21 corporation and membership-based organization that uses grassroots campaigns to mobilize low-  
22 income and minority communities to work to reform policy and ensure accountability from  
23 legislative representatives in New Jersey. NJCU focuses on issues such as workers’ rights,  
24 education, and foreclosure prevention. NJCU disseminates information to the general public and  
25 its members through emails, public events, publications, news articles, and resources on its  
26 website.

1 16. Plaintiff New York Communities for Change (“NYCC”) is a 501(c)(4) non-profit  
 2 corporation with a membership of working families in low- and moderate-income communities  
 3 throughout New York State. NYCC uses direct action, legislative advocacy, and community  
 4 organizing to impact public policy issues that directly affect its members, including workers’  
 5 rights, education equity, and foreclosure prevention. The organization is composed of nine  
 6 neighborhood chapters throughout the New York City region, as well as issue-based committees.  
 7 NYCC disseminates information to the general public through email, reports, and articles on its  
 8 website.

9 17. Defendant Federal Housing Finance Agency is an agency within the meaning of 5  
 10 U.S.C. § 552(f), located in Washington, D.C. The agency was created on July 30, 2008 by the  
 11 Housing and Economic Recovery Act of 2008. The FHFA acts as both the conservator and  
 12 regulator of the Federal National Mortgage Association and the Federal Home Loan Mortgage  
 13 Corporation. These entities, more commonly known as Fannie Mae and Freddie Mac,  
 14 respectively, are government-sponsored enterprises that buy mortgages from lenders to provide  
 15 liquidity to banks and savings and loans. One of the FHFA’s statutory mandates is to help the  
 16 housing market recover. *See* 12 U.S.C. § 4513(a)(1)(B)(ii). In 2008, Congress also enacted the  
 17 Emergency Economic Stabilization Act of 2008, which made it clear that the FHFA’s mandate to  
 18 facilitate recovery of the housing market includes helping homeowners avoid foreclosure.  
 19 Pursuant to that statute, the FHFA is obligated to “implement a plan that seeks to maximize  
 20 assistance for homeowners and use its authority to encourage the servicers of the underlying  
 21 mortgages, and considering net present value to the taxpayer, to take advantage of . . . available  
 22 programs to minimize foreclosures.” 12 U.S.C. § 5220(b)(1).

23  
 24 **JURISDICTION**

25 18. This Court has subject matter jurisdiction and personal jurisdiction over the  
 26 parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has subject  
 27 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346.

1 **VENUE AND INTRADISTRICT ASSIGNMENT**

2 19. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.  
3 §§ 1391(e) and 1402. Plaintiff ACCE has an office in this district, Plaintiff HERA has its  
4 principal place of business in this district, and a significant portion of the information sought in  
5 Plaintiffs’ FOIA requests centers on events arising in this district, in particular, Richmond,  
6 California.

7 20. Pursuant to Local Rule 3-2(c) and (d), assignment to the San Francisco-Oakland  
8 Division is proper because Plaintiff ACCE has an office in this district, Plaintiff HERA is  
9 headquartered in Alameda County and a significant portion of the information sought in  
10 Plaintiffs’ FOIA requests centers on events arising in Richmond, California, located in Contra  
11 Costa County.

12 **FACTUAL ALLEGATIONS**

13 **Principal Reduction Would Help Homeowners and Taxpayers**

14  
15 21. Economists across the political spectrum have identified mortgage debt as one of  
16 the prime obstacles to strong economic growth and have urged that the government implement a  
17 program of widespread mortgage principal reduction. By reducing homeowners’ monthly bills,  
18 principal reduction increases families’ disposable income and increases consumer demand for  
19 goods and services – key elements of a recovery to robust economic growth.

20 22. The Secretary of the Treasury has called for the FHFA to adopt principal  
21 reduction, believing it would provide much needed help to struggling homeowners and help  
22 repair the nation’s housing market. The Congressional Budget Office has estimated that such a  
23 program could save taxpayers \$2.8 billion. Nevertheless, the FHFA has declined to implement a  
24 principal reduction program on loans owned by Fannie Mae or Freddie Mac.

25 23. Principal reduction for underwater homeowners can benefit both the borrower, by  
26 reducing monthly bills, and the mortgage holder, by reducing the likelihood of foreclosure,  
27 which is costly. Because foreclosures often reduce the value of surrounding properties, helping  
28

1 homeowners avoid foreclosure also benefits neighbors, and because foreclosures and declining  
2 property values reduce revenue to local governments, principal reduction can benefit  
3 communities and municipalities.

4 24. For mortgages that have been securitized, though, ownership of mortgages by  
5 numerous bondholders creates collective-action problems that can prevent principal reduction  
6 even when it would be in the interest of the bondholders. These problems may be compounded  
7 by the conflict of interest between bondholders and the mortgage servicers, for which  
8 foreclosures may be more profitable (or less costly) than principal reduction.

9 25. Some municipalities see eminent domain as a means to implement local principal  
10 reduction programs in the face of federal inaction. Advocates have suggested that state and  
11 municipal governments could use their eminent domain powers to buy and restructure  
12 underwater mortgages; such an approach sidesteps the collective-action problems that impede  
13 the otherwise economically rational solution of principal reduction. *See, e.g.*, Robert Hockett,  
14 *Paying Paul and Robbing No One: An Eminent Domain Solution for Underwater Mortgage*  
15 *Debt*, 19 FEDERAL RESERVE BANK OF NEW YORK: CURRENT ISSUES IN ECONOMICS AND FINANCE  
16 (2013). Municipalities have proposed to purchase residents' underwater mortgages, paying the  
17 mortgage holders current market value for the loans, and then issuing new mortgages to the  
18 homeowners in amounts that reflect their homes' current value. This results in lower mortgage  
19 payments.

20 26. Some of the nation's most powerful financial lobby groups, including the  
21 American Bankers Association, the American Securitization Forum, and the Securities Industry  
22 and Financial Markets Association ("SIFMA") have come out in strong opposition to eminent  
23 domain proposals. These groups have offered various justifications for their position, which are  
24 disputed by economists and leading experts outside of the financial industry.

### 25 **The FHFA Opposes the Use of Eminent Domain for Principal Reduction**

26 27. On July 31, 2013, Richmond made offers to purchase 624 underwater mortgages  
27 from the current servicers and trustees in order to refinance the mortgages. On September 10,



1 2013, the Richmond City Council voted to move forward with the Richmond CARES program,  
2 which contemplates the use of eminent domain to provide relief to struggling homeowners.

3 28. Several banks filed litigation against Richmond. On August 7, 2013, Wells Fargo  
4 and Deutsche Bank filed a federal lawsuit against Richmond in an attempt to block the City from  
5 its contemplated use of eminent domain. *See Wells Fargo v. City of Richmond*, No. 13-03663-  
6 CRB (N.D. Cal. filed Aug. 7, 2013). Recognizing the intense interest in the case, this Court  
7 highlighted the matter under the “Cases of Interest” section of its website. *See*  
8 <http://www.cand.uscourts.gov/casesofinterest> (visited December 4, 2013). While the lawsuit was  
9 dismissed on ripeness grounds in early September, it will likely be re-filed and fully adjudicated  
10 in the event Richmond implements its plan. Another similar lawsuit, filed by the Bank of New  
11 York Mellon, also on August 7, 2013, was dismissed in early November, also on ripeness  
12 grounds. *See Bank of New York Mellon v. City of Richmond*, No. 13-03664-CRB (N.D. Cal.  
13 filed Aug. 7, 2013).

14 29. Immediately after the banks filed suit against Richmond, the FHFA released a  
15 statement citing “serious concerns on the use of eminent domain to restructure existing financial  
16 contracts.” Press Release, Federal Housing Finance Agency, *FHFA Statement on Eminent*  
17 *Domain*, Aug. 8, 2013 (“FHFA Press Release”). The FHFA also stated that it might “take any of  
18 the following steps” against municipalities or states that implemented such a policy: “initiate  
19 legal challenges to any local or state action that sanctions the use of eminent domain to  
20 restructure mortgage loan contracts that affect the FHFA’s regulated entities; act by order or by  
21 regulation to direct the regulated entities to limit, restrict or cease business activities within the  
22 jurisdiction of any state or local authority employing eminent domain to restructure mortgage  
23 loan contracts; or take such other actions as may be appropriate to respond to market uncertainty  
24 or increased costs created by any movement to put in place such programs.” *Id.*

26 30. The FHFA’s statement is particularly difficult to understand in light of the fact  
27 that Richmond, and all other municipalities considering using eminent domain for principal  
28

1 reduction, have stated that they will use their eminent domain authority only to target loans held  
2 in private-label mortgage-backed securities. By definition, the loans that the government-  
3 sponsored entities, supervised by the FHFA, guarantee and securitize are packaged into agency  
4 mortgage-backed securities, and are therefore not subject to seizure under the eminent domain  
5 programs under discussion.

6 **The FHFA's Position on Principal Reduction Programs**  
7 **Is a Matter of Significant Public Interest**

8 31. For five years, the dynamics of the unfolding foreclosure crisis have been central  
9 to the story of the American economy. In this context, Richmond's proposal to use eminent  
10 domain to implement principal reduction and the FHFA's threat to take legal action in response  
11 have received tremendous media attention.

12 32. The media has extensively covered Richmond's proposed eminent domain  
13 solution to residents' underwater mortgages. *See, e.g.,* Shaila Dewan, *A City Invokes Seizure*  
14 *Laws to Save Homes*, N.Y. TIMES, July 29, 2013; Alejandro Lazo, *Richmond adopts eminent*  
15 *domain mortgage plan*, L.A. TIMES, July 30, 2013; Peter Dreier, *Wall Street Lobbyists Nervous*  
16 *As Cities Use Eminent Domain to Protect Homeowners*, THE HUFFINGTON POST, July 30, 2013;  
17 *Richmond Threatens Eminent Domain To Address Foreclosure Crisis*, CBS SAN FRANCISCO,  
18 July 30, 2013; Dan Levy & Jody Shenn, *Richmond Escalates Eminent Domain Plan With Loan*  
19 *Offers*, BLOOMBERG NEWS, July 30, 2013; Kate Berry, *Calif. City Threatens to Use Eminent*  
20 *Domain with Underwater Mortgages*, AMERICAN BANKER, July 30, 2013; Carolyn Said,  
21 *Richmond's pioneering eminent-domain threat*, S.F. CHRONICLE, July 31, 2013.

22 33. The media has also dedicated significant coverage to FHFA's response to  
23 Richmond's proposal. *See, e.g.,* Nick Timiraos, *Fannie, Freddie Regulator Weighs Action on*  
24 *Eminent Domain*, WALL ST. J., Aug. 8, 2013; Margaret Chadbourn, *Freddie Mac may sue*  
25 *California city on eminent domain loan seizures*, REUTERS, Aug. 7, 2013.

1           34.     The breadth and extent of media coverage demonstrates that there is significant  
2 public interest in these issues.

3                   **Plaintiffs Filed a FOIA Request to Obtain Much Needed Information from the**  
4                   **FHFA, But Their Request Has Gone Unanswered**

5           35.     On October 1, 2013, Plaintiffs submitted a FOIA request to the FHFA seeking all  
6 records pertaining to the use of eminent domain to purchase mortgages. A copy of Plaintiffs’  
7 FOIA request is appended hereto as Exhibit 1.

8           36.     In particular, Plaintiffs’ FOIA request seeks:

- 9                   (a)     All documents related to any and all communications or meetings between  
10 FHFA leadership and representatives of the Securities Industry and  
11 Financial Markets Association (SIFMA), the American Securitization  
12 Forum (ASF), the American Bankers Association (ABA), and the  
13 Association of Institutional Investors (AII) pertaining to the use of  
14 eminent domain to purchase mortgages. This includes correspondence,  
15 phone messages, emails, calendar entries, and notes or memoranda  
16 describing any such meetings.
- 17                   (b)     All documents related to any and all communications or meetings between  
18 FHFA leadership and representatives of the California Mortgage Bankers  
19 Association (MBA), the California Mortgage Bankers Association  
20 (MBA), the Investment Company Institute (ICI), the Financial Services  
21 Roundtable (FSR), the National Association of Home Builders,  
22 DoubleLine, BlackRock, and the Pacific Investment Management  
23 Company (PIMCO) pertaining to the use of eminent domain to purchase  
24 mortgages. This includes correspondence, phone messages, emails,  
25 calendar entries, and notes or memoranda describing any such meetings.
- 26                   (c)     All documents related to any and all communications or meetings between  
27 FHFA leadership and representatives of Wells Fargo Bank, Deutsche  
28 Bank, Bank of America, Ally Bank, Chase Bank, and Citigroup,  
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.
- (d)     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.
- (e)     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.
- (f)     Any studies or empirical analyses of the impact of eminent domain or  
principal reduction proposals relied upon by FHFA in support of the

1 assertions and positions set forth in the General Counsel's August 7<sup>th</sup>, 2013  
2 Memorandum titled "Summary of Comments and Additional Analysis  
3 Regarding Input on Use of Eminent Domain to Restructure Mortgages"  
4 and the FHFA's August 8<sup>th</sup>, 2013 "Statement on Eminent Domain."

5 37. Plaintiffs also requested expedited processing, pursuant to 5 U.S.C. §  
6 522(a)(6)(E), on the grounds that there is an "urgency to inform the public about an actual or  
7 alleged federal government activity" and also that this is "a matter of widespread and exceptional  
8 media interest in which there exist possible questions about the government's integrity which  
9 affect public confidence." 28 C.F.R. § 16.5(d)(1)(ii) & (iv).

10 38. By email dated the same day, FHFA acknowledged receipt of Plaintiffs' FOIA  
11 request. A copy of this email is appended hereto as Exhibit 2.

12 39. As of the date of the filing of this complaint, Plaintiffs have not received any  
13 further communications or responsive documents from the FHFA.

14 40. More than 20 working days have passed since the FHFA received Plaintiffs'  
15 FOIA request.

16 41. Plaintiffs have exhausted all applicable administrative remedies.

17 42. FHFA has wrongfully withheld the requested records from Plaintiffs.

18 **The Public Urgently Needs Information About the**  
19 **FHFA's Position on Principal Reduction Because of Congressional, Local, and**  
20 **Nationwide Debates on This Issue**

21 43. Congress, local communities, and the nation at large are all actively debating  
22 principal reduction and eminent domain. Congress is considering at least one piece of legislation  
23 that would prevent the use of eminent domain for principal reduction. At the same time, efforts  
24 are underway to advance a program similar to Richmond's in a number of municipalities,  
25 including San Francisco, California; El Monte, California; Seattle, Washington; Irvington, New  
26 Jersey; Newark, New Jersey; and Yonkers, New York. The information requested by Plaintiffs  
27 is crucial to all of these pending debates, but must be disclosed now to have any relevance to  
28 them.

44. On June 28, 2013, U.S. Representative John Campbell, of the 45th Congressional

1 District of California, introduced a bill that that would prohibit the government-sponsored  
2 entities from purchasing, and the Federal Housing Administration from insuring, a mortgage in  
3 any community that has used eminent domain to purchase mortgages. H.R. 6397, 112th Cong.  
4 (2013). Representative Campbell’s bill may be taken up at any time.

5 45. On November 27, 2013, four United States Senators sent a letter to the  
6 Department of Housing and Urban Development (“HUD”) and the Secretary of the Treasury,  
7 expressing their opposition to eminent domain proposals, stating that they are “prepared to  
8 pursue a legislative solution,” and urging HUD to use its existing authority to prohibit the FHFA  
9 “from insuring mortgages on any affected properties.”  
10

11 46. At the same time, local communities, including San Francisco, California; El  
12 Monte, California; Seattle, Washington; Irvington, New Jersey; Newark, New Jersey; and  
13 Yonkers, New York, continue to explore principal reduction and eminent domain proposals. In  
14 order to evaluate these proposals, these communities need more information about FHFA and its  
15 position on principal reduction programs and eminent domain.  
16

17 **The Public Also Urgently Needs Information About the**  
18 **FHFA’s Position on Principal Reduction Because the**  
19 **FHFA’s Actions Affect Public Confidence**

20 47. The FHFA’s actions raise “possible questions about the Federal Government’s  
21 integrity, affecting public confidence.” 12 C.F.R. § 1202.10(a)(4). The FHFA has threatened to  
22 initiate legal action against any jurisdiction that seeks to use eminent domain to restructure  
23 mortgages. *See* FHFA Press Release. While this position might benefit particular firms in the  
24 financial industry, it appears to be in conflict with the agency’s obligations to assist homeowners,  
25 to minimize the incidence of foreclosures, and to refrain from conduct that has a discriminatory  
26 impact on minority communities.

27 48. Under federal housing law, the FHFA has a statutory duty to maximize assistance  
28

1 to struggling homeowners and promote programs that reduce foreclosure rates. *See* 12 U.S.C. §  
2 5220(b)(1). By threatening legal action against Richmond and other jurisdictions considering  
3 eminent domain, the FHFA not only acts contrary to the spirit of this mandate, but it effectively  
4 blocks the communities hit hardest by the foreclosure crisis from pursuing one potentially  
5 effective solution on behalf of their residents.

6         49. In addition, the FHFA’s threat to deny credit to any community that employs  
7 eminent domain for principal reduction raises Fair Housing Act (“FHA”) and Equal Credit  
8 Opportunity Act concerns, as the communities most interested in eminent domain tend to have  
9 disproportionately high concentrations of African-American and Latino residents. While the  
10 foreclosure crisis is national in scope, communities of color have been hit especially hard. These  
11 communities were the sites of the worst and most concentrated predatory lending during the  
12 housing boom, and they are not experiencing the recovery in housing prices that has begun in  
13 many places.

14         50. If the FHFA were to take action against Richmond, for example, that action  
15 would impact a community that is disproportionately African-American and Latino. While the  
16 San Francisco Bay Area’s population is only 23% Latino, Richmond’s is nearly double that, at  
17 40%. And while African-Americans make up only 6.7% of the Bay Area’s population, they are  
18 concentrated in Richmond at more than three times that rate, or 25%. Thus, if the FHFA were to  
19 retaliate against Richmond for pursuing an eminent domain proposal, that action would have a  
20 significant disparate impact on minority borrowers, in possible violation of federal anti-  
21 discrimination law.

22         51. Further, the FHFA’s actions come against the backdrop of HUD’s recent  
23 emphasis on the importance of disparate impact claims in combating the effects of predatory  
24 lending during the housing boom. HUD has recently adopted a national regulatory framework  
25

1 for disparate impact claims under the FHA. Implementation of the Fair Housing Act's  
2 Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (to be codified at 24 C.F.R.  
3 pt. 100). In light of HUD's new regulations and federal and state fair lending law, the FHFA  
4 must take great care to avoid implementing any policy which restricts access to credit in  
5 disproportionately minority communities.

6           52. On November 15, 2013, ten members of Congress sent a letter to Acting FHFA  
7 Director Ed DeMarco urging the agency to rescind its threat to take legal action against  
8 communities considering eminent domain, and instead to prohibit any discrimination in the  
9 provision of credit to homeowners whose mortgages were modified by eminent domain.  
10 Emphasizing that the mortgage crisis has disproportionately hurt communities of color, the letter  
11 states that "[r]efusal by the Federal Housing Finance Agency to insure loans that were changed  
12 by eminent domain would violate existing rules that prohibit discrimination to qualified  
13 borrowers and do further harm to the economy."

14  
15           53. The public has a vital interest in learning the full nature and extent of the  
16 relationship between FHFA and financial industry leaders. The FHFA has acknowledged  
17 sustained e-mail contact between Acting Director DeMarco, and Richard Dorfman, a Managing  
18 Director of SIFMA, regarding the prospect of local eminent domain solutions. E-mail from  
19 Richard Dorfman, Managing Dir. and Head of Securitization, SIFMA, to Edward DeMarco,  
20 Acting Director, FHFA (July 10, 2012, 14:00).

21  
22           54. Expedited processing of Plaintiffs' FOIA request is warranted for two reasons.  
23 First, there is widespread media interest in the topic of using eminent domain for principal  
24 mortgage reduction, and possible questions about the FHFA's integrity have been raised by its  
25 threats to take action against jurisdictions that seek to aid homeowners through eminent domain.  
26 See 12 C.F.R. § 1202.10(a)(4). Second, there are ongoing public and Congressional debates on  
27

1 this topic, as evidenced by, among other things, recently introduced legislation, the discussions  
2 around the nomination of Rep. Watt to head the FHFA, and debates in local communities across  
3 the country. The information sought in this request would contribute substantially to these  
4 debates, and it must be disclosed now, while those debates are ongoing. There is therefore  
5 urgency to this request, which is made by requesters primarily engaged in the dissemination of  
6 information. *See* 12 C.F.R. §1202.10(a)(2).

7  
8 **FIRST CLAIM FOR RELIEF**  
9 **Violation of Freedom of Information Act**

10 55. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

11 56. Defendant FHFA has failed to comply with the statutory time for the processing  
12 of FOIA requests and has wrongfully withheld agency records requested by Plaintiffs under  
13 FOIA.

14 57. Plaintiffs have exhausted the applicable administrative remedies with respect to  
15 FHFA's failure to timely comply with Plaintiffs' requests.

16 58. Plaintiffs are entitled to expedited processing. The public urgently needs  
17 information about the FHFA's position on principal reduction and eminent domain. The FHFA's  
18 actions in response to Richmond's proposed eminent domain solution received widespread  
19 media attention and raise possible questions about the federal government's integrity, affecting  
20 public confidence.

21 59. Plaintiffs are entitled to injunctive relief with respect to the release and disclosure  
22 of the requested documents because Defendant FHFA continues to improperly withhold agency  
23 records in violation of FOIA. Plaintiffs will suffer irreparable injury from, and have no adequate  
24 legal remedy for, the FHFA's illegal withholding of government documents pertaining to the  
25 subject of Plaintiffs' FOIA request.



1 **PRAAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray that this Court:

3 A. Order Defendant FHFA to process immediately the requested records in their  
4 entirety;

5 B. Order Defendant FHFA to make the requested records in their entirety available  
6 to Plaintiffs promptly upon completion of its processing of such records;

7 C. Provide for expeditious processing of Plaintiffs’ FOIA request;

8 D. Enter a preliminary and permanent injunction against the FHFA ordering the  
9 relief requested herein;

10 E. Declare that FHFA’s failure to disclose the records requested by Plaintiffs is  
11 unlawful;

12 F. Award Plaintiffs their litigation costs and reasonable attorney’s fees incurred in  
13 this action;

14 G. Grant such other relief as the Court may deem just and proper.

15  
16 Dated: December 5, 2013

By: /s/ Linda Lye  
Linda Lye

17  
18 Linda Lye (CA SBN 215584)  
llye@aclunc.org  
19 AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA  
20 39 Drumm Street  
San Francisco, CA 94111  
21 Tel: (415) 621-2493  
22 Fax: (415) 255-8437

23 Alexander Shalom (*pro hac vice* pending)  
ashalom@aclu-nj.org  
24 AMERICAN CIVIL LIBERTIES UNION OF  
NEW JERSEY FOUNDATION  
25 P.O. Box 32159  
26 Newark, NJ 07102  
27 Tel: (973) 854-1714  
28 Fax: (973) 642-6523

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Rachel Goodman (*pro hac vice* pending)  
rgoodman@aclu.org  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18<sup>th</sup> Fl.  
New York, NY 10004  
Tel: (212) 549-2500  
Fax: (212) 549-2654

Ohad Barkan (*pro hac vice* pending)  
abarkan@populardemocracy.org  
CENTER FOR POPULAR DEMOCRACY  
802 Kent Avenue  
Brooklyn, NY 11103  
Tel: (347) 915-8046  
Fax: (718) 228-9165

*Attorneys for Plaintiffs*

# **Exhibit 1**



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>.

<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.

\* \* \*

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.

\* \* \*

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

# **Exhibit 2**

**RE: FOIA Request Attached**

Easter, Stacy [Stacy.Easter@fhfa.gov]

**Sent:** Tuesday, October 01, 2013 3:50 PM**To:** Josie Duffy

Your FOIA request has been received. You will receive an official acknowledgement letter shortly.

---

**From:** Josie Duffy [mailto:JDuffy@populardemocracy.org]**Sent:** Tuesday, October 01, 2013 3:28 PM**To:** #FOIA**Subject:** FOIA Request Attached

Hello,

As noted in my previous email, the FHFA FOIA Submission system is not working.

Please find our FOIA request attached. I have attached it as both a Microsoft Word Document and a PDF.

I presume that, in light of a malfunctioning system, submitting our request through e-mail is entirely acceptable. If this is incorrect please let me know as soon as possible, as our request requires expedited processing.

Regards,

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



**Josie Duffy**

POLICY ADVOCATE

T: 347.915.0432 x133

**Center for Popular Democracy**

802 Kent Avenue | Brooklyn NY 11205

[populardemocracy.org](http://populardemocracy.org)[@popdemoc](#)[facebook.com/populardemocracy](https://facebook.com/populardemocracy)

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