U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

APR 1 5 2016

Mr. Kevin Stein
Associate Director
California Reinvestment Coalition
Suite 230
474 Valencia Street
San Francisco, CA 94103

RE: Freedom of Information Act Request
FOIA Control No.: 16-FI-HQ-00797

Dear Mr. Stein:

This letter is in response to your amended Freedom of Information (FOIA) request dated December 4, 2015. Your original request was received on November 20, 2014, and your amended request was received on January 28, 2016. You asked for copies of the following:

1. All documents containing or memorializing the number, nature and resolution of complaints filed, informally or formally, by consumers, borrowers, and their advocates against OneWest Bank, Financial Freedom, and their affiliates, from April 2009 to the present.
2. All documents containing data or estimates of the number of outstanding Home Equity Conversion Mortgages (HECM) mortgages where a borrower's spouse was not listed on the promissory note.
3. All documents containing data or estimates of the number of HECM foreclosures since April 2009.
4. All documents containing data or estimates of the number of HECM foreclosures where the borrower passed away and a surviving spouse was foreclosed upon, since April 2009.
5. All documents containing data or estimates of the number of HECM foreclosures by OneWest, Financial Freedom and their affiliates of a) borrowers and b) of non-borrower spouses, from April 2009.
6. All documents containing or memorializing questions, conversations or interpretations between HUD staff and HECM mortgage servicers regarding implementation of Mortgagee Letter 2015-15.
7. Documents concerning the eligibility of any and all Non-Borrowing Spouses (NBS) for the Mortgagee Optional Election (MOE) as set forth in Mortgagee Letter (ML) 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.

8. Number of HECM foreclosures of Non-Borrowing Spouses and the number of complaints against servicers filed with HUD that have been initiated since the adoption of Mortgagee Letter 2015-15, by servicer.

Your request is granted in part. In response to item #7 of your request, HUD provides the following:

a) Total number of requests for MOE = 100
b) Number of pending requests = 30
c) Number of requests granted = 32
d) Number of requests denied = 38
e) The top 3 reasons for denial are as follows:

    i) Outstanding property charges were not re-paid, making the HECM ineligible for assignment;
    ii) Social Security Number verification was not provided for the NBS; and
    iii) Loan Balance and Net Principal Limit did not meet FHA's tolerance level.

For items #1-6 and #8, your request is denied. Due to the fact that HUD does not employ systems that permit an electronic search for records responsive to this portion of your request, HUD would have to engage in a manual search of hundreds of thousands of records in order to produce responsive records. HUD has determined that the staff time and resources required to produce copies of all of the records you requested in response to items #1-6 and #8 would be unreasonably burdensome.[1] More specifically, in order for HUD to search, identify, process, and produce the

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[1] See Solar Sources, Inc. v. United States, 142 F.3d 1033, 1039 (7th Cir. 1998) (refusing to order agency to identify and segregate nonexempt documents from millions of pages of files in light of government's estimate that doing so would take eight work-years); Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 892 (D.C. Cir. 1995) (agreeing that search that would require review of twenty-three years of unindexed files would be unreasonably burdensome, but disagreeing that search through chronologically indexed agency files for dated memorandum would be burdensome); Van Strum v. EPA, Nos. 91-35404, 91-35577, 1992 WL 197660, at *1 (9th Cir. 1992) (accepting agency justification denying or seeking clarification of overly broad requests because agency not required to conduct search which would place inordinate burden on agency resources); Cuban v. SEC, 795 F. Supp. 2d 43, 48-51 (D.D.C. 2011) (concluding that requiring manual search of "206 linear feet of cabinet space" containing uncategorized forms constituted burdensome search, where agency already searched 145,000 forms electronically with no responsive results); Wolf v. CIA, 569 F. Supp. 2d 1, 9 (D.D.C. 2008) (holding that search of microfilm files requiring frame-by-frame reel review that would take estimated 3675 hours and $147,000 constitutes unreasonably burdensome search); Schrecker v. DOJ, 217 F. Supp. 2d 29, 35 (D.D.C. 2002) (finding "that to require an agency to hand search through millions of documents is not reasonable and therefore not necessary," as agency already had searched "the most likely place responsive documents would be located"), aff'd, 349 F.3d 657 (D.C. Cir. 2003); Burns v. DOJ, No. 99-3173, slip op. at 2 (D.D.C. Feb. 5, 2001) (concluding that "given the capacity

responsive records requested, HUD estimates it will require a dedicated full-time person approximately120 years. This estimate along with an explanation is broken out as follows:

1. **Item #1:**

   HUD's first ability to track formal complaints for HECM borrowers via an automated tool was circa mid-2010. For this purpose, the automated tool used at that time was known as SMART. In October 2012, HUD began using an additional system, known as HERMIT, to track – among other things – complaints from HECM borrowers. Such complaints are entered into HERMIT and SMART by any one of the following groups: (1) HUD staff; (2) HUD's special loan servicing contractor (NOVAD), and/or (3) FHA-approved reverse mortgage servicers. Today, HERMIT's total population of loans for Financial Freedom and its affiliates is 192,612. Since both SMART and HERMIT do not have an official screen dedicated to capturing complaints from HECM borrowers, the aforementioned groups use a "Note" field to record such inquiries. Therefore, to fulfill FOIA Request item #1, a *manual* review of each loan/case in both SMART and HERMIT is necessary. HUD estimates that a manual review of each loan/case in SMART and HERMIT will take 60 minutes (i.e., 30-minutes per system, per loan) to review and determine if any complaints were received. This equates to a minimum of approximately 193,000 hours. An additional 160 hours is needed to compile reports and have them reviewed for accuracy. Additional time and costs are required to photocopy any complaints found to be responsive to this request.

2. **Item #2:**

   HUD does not have this information because HUD did not track NBS data prior to its implementation of ML 2014-07, published on April 25, 2014. However, FHA-approved reverse mortgage servicers *may* have collected this data via their proprietary systems. At this time, HERMIT, FHA's system of record (*used to track all HECM cases from origination through termination*) includes roughly 4,830 HECMs where a NBS has been identified (i.e., not reflected on the promissory note as a Borrower). The collection of this data commenced on August 4, 2014, the Effective Date

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of the reels and the absence of any index," a request for specific telephone conversations recorded on reel-to-reel tapes was "unreasonably burdensome" because "it would take an inordinate [amount of] time to listen to the reels in order to locate any requested conversations that might exist"); Blackman v. DOJ, No. 00-3004, slip op. at 5 (D.D.C. July 5, 2001) (declaring request that would require a manual search through 37 million pages to be "unreasonable in light of the resources needed" to process it), appeal dismissed for lack of prosecution, No. 01-5431 (D.C. Cir. Jan. 2, 2003); O'Harvey v. Office of Workers' Comp. Programs, No. 95-0187, slip op. at 3 (E.D. Wash. Dec. 29, 1997) (finding request to be unreasonably burdensome because search would require agency "to review all of the case files maintained by the agency" and "would entail review of millions of pages of hard copies"), aff'd sub nom. O'Harvey v. Comp. Programs Workers, 188 F.3d 514 (9th Cir. 1999) (unpublished table decision).

of ML 2014-07. To conduct a search and print out of 4, 830 complete files/cases in HERMIT in order to be responsive to this request, HUD estimates that it will take approximately 3,622 hours (i.e., 45 minutes to search, print out, collect and arrange all documents per case/file). Additional time and costs are required to photocopy the records responsive to this request.

3. **Item #3:**

Per HERMIT, there were 41,237 HECM foreclosures completed since April 2009. To conduct a search and print out of 41,237 complete files/cases in HERMIT to be responsive to this request, HUD estimates that it will take approximately 30,928 hours (i.e., 45 minutes to search, print out, collect and arrange all documents per case/file). Additional time and costs are required to photocopy the records responsive to this request.

4. **Item #4:**

HUD does not have this information because HUD did not track NBS data prior to its implementation of ML 2014-07, published on April 25, 2014. However, FHA-approved reverse mortgage servicers *may* have collected this information via their proprietary systems. The collection of this data commenced on August 4, 2014, the Effective Date of ML 2014-07. To conduct a search and print out of 4,830 NBS cases in HERMIT today, HUD estimates that it will take approximately 3,622 hours (i.e., 45 minutes to search, print out, collect and arrange all documents per case/file). Additional time and costs are required to photocopy the records responsive to this request.

5. **Item #5:**

From April 2009 to date, using data in HERMIT, Financial Freedom and its affiliates foreclosed upon at least 16,220 HECMs. HUD can only identify the volume of foreclosures completed by OneWest or Financial Freedom. It cannot identify those foreclosures which relate to a NBS because HUD did not track that data prior to the implementation of ML 2014-07.

Subsequent to the publication of ML 2015-15, HECM servicers began to identify loans with a NBS and, as such, these servicers *may* have collected this information via their proprietary systems. OneWest/Financial Freedom has been acquired by CIT Bank so that entity may also have collected this information. To conduct a search and print out of the 16,220 foreclosures in HERMIT today, HUD estimates that it will take approximately 11,415 hours (i.e., 45 minutes to search, print out, collect and arrange all documents per case/file). Additional time and costs are required to photocopy the records responsive to this request.

6. **Item #6:**

HUD clarifies and interprets policy via Frequently Asked Questions (FAQs) - which are

posted online, official communication from a Division Director or Office Director via formal written correspondence, and at mortgage industry conferences. None of these methods were used to interpret the guidance related to ML 2015-15.

7. **Item #8:**

a) HUD did not track NBS data prior to implementation of ML 14-07. However, subsequent to the publication of ML 2015-15, reverse mortgage servicers began to capture data on HECM loans (with a NBS) in their proprietary systems and, therefore, *may* have collected this information related to such foreclosures.

b) Based on HUD's system of record, HUD's contractor received a total of 13,016 inquiries related to HECM loans post publication of ML 2015-15. As the nature of these inquiries is not in a searchable format, it will be necessary to review each inquiry to determine the number of those related to the foreclosure of a HECM where a NBS exists.

HUD estimates that a manual review of each of the aforementioned inquiries in SMART will take 30 minutes per case to determine if any complaints were received. This equates to a minimum of approximately 6,508 hours. An additional 16 hours is needed to compile reports and have them reviewed for accuracy. Additional time and costs are required to photocopy the records responsive to this request.

I am the official responsible for this determination based on information provided by the Department's Office of Housing. You may appeal this determination within 30 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting the appeal. You may submit your appeal online at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia/foiaappeals or via mail. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:
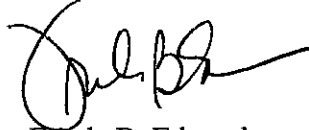
> U.S. Department of Housing and Urban Development
> Attention: FOIA Appeals
> Office of Ethics, Appeals and Personnel Law
> Ethics and Appeals Division
> 451 Seventh Street, SW, Suite 2130
> Washington, DC 20410
>
> Telephone: (202) 708-3815

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address, telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you have any questions regarding your request, you may contact Eugene McGirt at (202) 402-4315. Thank you for your interest in the Department's programs and policies.

Sincerely,

Frieda B. Edwards
Acting Director for FOIA and
 Executive Correspondence
Office of the Executive Secretariat