

## Freedom Through Justice Foundation

2111 Wilson Blvd #700  
Arlington, VA 22201  
703.875.8625

September 2, 2011

### VIA CERTIFIED MAIL& EMAIL

Steven Tuminaro  
Director, Office of Public Policy and Legislative Affairs  
NeighborWorks America  
1325 G St., NW,  
Suite 800,  
Washington, DC 20005-3100  
stuminaro@nw.org

### Re: Freedom of Information Act Request

Dear Mr. Tuminaro:

We write on behalf of the Freedom Through Justice Foundation, a 501(c)(3) nonprofit corporation that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. We write out of the public concern that taxpayer dollars not be misspent or mismanaged by nonprofit grant recipients. Accordingly, we write to request certain documents pursuant to the Freedom of Information Act (“FOIA”).

On September 29, 2011, the U.S. Government Accountability Office (“GAO”) determination that the Affordable Housing Centers of America (“AHCOA,” formerly known as ACORN Housing) is not an affiliate or related organization of ACORN becomes a final appropriations decision binding on the federal government.<sup>1</sup> Because this decision would allow AHCOA—an organization which has recently been identified as having mismanaged taxpayer dollars<sup>2</sup>—to receive federal funds, there is a public need for any information that might result in a reconsideration of the GAO’s appropriations decision before the September 29, 2011 deadline.

On June 7, 2011, NeighborWorks, in its Round 5 announcement of National Foreclosure Mitigation Counseling (“NFMC”) grant recipients, chose not to fund AHCOA, a HUD-approved housing counseling intermediary which received NFMC funds in the past.<sup>3</sup> Subsequently, in the

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<sup>1</sup> See B-320329, Sept. 29, 2010. NEIGHBORWORKS AMERICA--AVAILABILITY OF APPROPRIATIONS FOR GRANTS TO AFFORDABLE HOUSING CENTERS OF AMERICA.

<sup>2</sup> Office of Inspector General, U.S. Department of Housing and Urban Development, *ACORN Housing Corporation, Inc. Evaluation of HUD Housing Counseling Grant Expenditures*, (Sept. 21, 2010), available at <http://www.hudoig.gov/pdf/IEReports/IED-10-002.pdf> (making no distinction between ACORN Housing and AHCOA and finding AHCOA must “reimbur[e] the program for unsupported and ineligible salary expenses charged to the HUD housing counseling grants[ ]”).

<sup>3</sup> NeighborWorks America, Round 5 NFMC Funding, (June 7, 2011), available at <http://www.nw.org/network/foreclosure/nfmc/documents/AR5awardsbyawardamount.pdf>.

June 14, 2011 GAO final report on ACORN's federal funding,<sup>4</sup> a footnote cited a report written by the NeighborWorks Office of Special Audit concerning the relationship between AHCOA and ACORN. The proximity of these two events, combined with the fact that AHCOA was denied NeighborWorks funding, gives us reason to believe that the Office of Special Audit report found AHCOA to be an affiliate or related organization of ACORN.<sup>5</sup>

This request is entitled to expedited review and production pursuant to 24 CFR § 15.105. The Freedom Through Justice Foundation is primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity. *See Schacter v. IRS*, 3 GDS ¶ 82,515 at 83,302-03 (D.D.C. 1982) (requiring disclosure pertaining to imminent government action). Pursuant to the provisions of FOIA, 5 U.S.C. § 552, the Freedom Through Justice Foundation hereby requests that NeighborWorks therefore produce the following within ten (10) business days:

1. All Office of Internal Audit reports from January 2009 to present, including the Internal Audit report on AHCOA.
2. All requests from Congress or the public for NeighborWorks to make its Office of Internal Audit reports publicly accessible and all documents concerning the timing of NeighborWorks response to such requests, if any.
3. All documents and records of or by the NeighborWorks staff or Board of Directors members concerning any Board action, decision, or determination referring or relating to any or all requests for the placement of Office of Internal Audit reports on the NeighborWorks website for public inspection and use.
4. All documents referring or relating to the relationship between ACORN and AHCOA, including but not limited to communications by NeighborWorks staff or Board members to Congress, the U.S. Department of Housing and Urban Development, the U.S. Government Accountability Office, or the Executive Office of the President.
5. All documents referring or relating to the processes and procedures of internal oversight at NeighborWorks America, including but not limited to all documents or records concerning the lack of an Office of Inspector General at NeighborWorks.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . .The

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<sup>4</sup> GAO REPORT NUMBER GAO-11-484, *ACORN: Federal Funding and Monitoring* (June 14, 2011), available at <http://www.gao.gov/products/GAO-11-484> (last visited Aug. 19, 2011).

<sup>5</sup> See NEIGHBORWORKS, OFFICE OF INTERNAL AUDIT, *Special Audit on the Use of National Foreclosure Mitigation Counseling Program Grant Funds by ACORN Housing Corporation, Inc.* (Washington, D.C., 2010)

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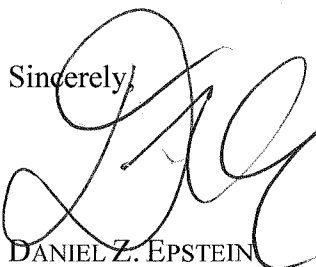
presumption of disclosure should be applied to all decisions involving FOIA.<sup>6</sup>

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Freedom Through Justice Foundation is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation prefers to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, the Freedom Through Justice Foundation will accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact Keith Gates or Will Hild at (703) 875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within ten (10) business days. Thank you for your cooperation.

Sincerely,  
  
DANIEL Z. EPSTEIN  
EXECUTIVE DIRECTOR

Encl.

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<sup>6</sup> PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, (Jan. 21, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct) (last visited Aug. 30, 2011).

## Responding to Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Freedom Through Justice Foundation.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Freedom Through Justice Foundation's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the paragraph in the Freedom Through Justice Foundation's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Freedom Through Justice Foundation staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

### **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual’s business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.