From: NGrandquis@aol.com
Sent: Monday, August 27, 2012 12:08 PM
To: Eminent Domain OGC
Subject: Use of Eminent Domain To Restructure Performing Loans Comments [FHFA. 2012-N-11]

Richard Hornsby,Chief Operating Officer
Federal Housing Finance Agency
OGC, 400 Seventh Street SW.Eighth Floor,
Washington, DC 20024

Re: Federal Register Volume 77
Thursday, August 9, 2012
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Dear Mr Hornsby:

Thank you for the opportunity to provide input that may be useful to the Agency as it moves forward in its deliberation on appropriate action needed to address the concerns regarding the use of local eminent domain procedures to alter the value of Enterprise or Bank securities holdings. My remarks will be limited to input regarding the impact on the Banks since I was a vice president of the Des Moines FHLBank for six years and a county eminent domain commissioner for eleven.

Let me begin by stating clearly that it appears a "sui generis" action, that being a distinctly different/unique action, needs to be taken by the FHFA without further delay. The need for a concrete plan resolving the issues surrounding security holdings that involve the crisis of single family underwater mortgages (in some areas as high as 50%) in the country continues to be urgent and destabilizing. Using county eminent domain procedures, as some have proposed to essentially condemn the mortgages, may be the only viable alternative if the FHFA doesn't design a more consonant plan directly and issue proposed reguations.

The FHFA unequivocally has, through the Enterprises and the Banks , access to very competent staff resources they can call on to accomplish this. There is precedent as when I was with the Bank System FHFB staff convened a meeting of Bank officials, senior officers from our stockholder banks and other interested parties prior to issuing proposed regulations regarding amendments to 12 C.F.R. 960.9 of the FHFB/AHP regulations. If the proposed eminent domain procedures have to be used and the Banks must revalue pledged collateral for advances, in absence of alternative regulations issued from the FHFA, the negative impact would be extreme. Altering the value of single family performing loans that stockholder banks/insurance companies/credit unions pledge as collateral for Bank advances under their blanket pledge agreements would be destabilizing.

Director DeMarco has stated his opposition to principal reduction plans like the Home Affordable Modification Program Principal Reduction Alternative (HAMP-PRA) as an answer. In 1989, when I was with a local nonprofit housing development corporation, we were awarded a HUD/FHA Nehemiah grant for principal reductions that was used effectively to subsidize single family mortgages and revitalize a LI neighborhoods so there is precedent for this,too. My point is, that perhaps an alternative similar to what is listed below could be devised that would meet with the Director's approval. In essence, a perpetual lien/loan would be placed on the properties until markets rally, then subsidies would be reimbursed and in the interim the homes could be sold or continued to be occupied while keeping payments current.

* A soft subordinate principal reduction(SSPR) mortgage lien (much like the soft second/third liens currently filed on homes subsidized by the Banks' AHP program for low income housing retention purposes)could be placed on mortgages whose current FMV is determined by the FHFA to be equal to or less than the balance on their mortgage.
* The amount of the SSPR lien would be the difference between the FMV and the mortgage balance. This portion of the Enterprises/Banks guaranteed mortgage payment streams would be made by the private mortgage insurers, FHA/VA, the Enterprises or the Banks. The liens would be filed so that in the event of a market recovery and the property sells for an amount above the FMV, as determined by the FHFA when the lien was filed, the entity would receive reimbursement for payments made upon future sales of the residence.
* An additional six/seven per cent of the mortgage balance could be added to the amount of the SSPR lien to pay for real estate commissions. This would be so current underwater homeowners that need to sell their homes could do so and wouldn't try to sell them without a Realtor. This would only be available on properties whose mortgages are current.
* In the event that the homeowner disputes the new FMV (set by the FHFA) of their property, in a notice that would be provided to them from the FHFA, then an interagency agreement could be established with specific county eminent domain commissions.
* This interagency agreement would give the property owners "their day in court" so to speak and the FHFA would agree to abide by the FMV set by the respective commissions. As an eminent domain appeals commissioner the public entity (state,county,municipal) used to provide their appraisals and the property owners/or their attorneys, theirs. The owner was not required to obtain an appraisal(s). We would hear the testimony of each side's appraisers, throw out the low and the high appraisal in our deliberations and generally set the FMV at something in the middle of the appraisals remaining. In Iowa, we were required to set foot on and/or to tour the property before deliberating. Awards were made in excess of $5 million.
The FHFA is correct, that local/county eminent domain commissions are generally not an appropriate venue to value complex contractual arrangements that are traded in national and international markets but they could contract with people who have such expertise. These commissions are, however, experienced in reviewing both residential and commercial appraisals and setting the FMVs of the same and could/should play an important role in a FHFA proposed plan.

Again, I appreciate the opportunity to provide input and know the FHFA will find an equitable way to resolve this critical situation plaguing our Nation while at the same time preserving/conserving the assets of the Enterprises that are intertwined with the Bank's wholesale lending programs. If something like the scenario above was implemented it would help not only those suffering by making payments or experiencing foreclosure on underwater mortgages but it would help our realtors, our lenders and neighborhoods,too. Ultimately, it has to be about stabilizing FMVs for those homeowners underwater and new families seeking extensions of credit to become homeowners which has become synonymous with realizing the American Dream for many. We know the FHFA can and will find a way.

Sincerely,

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