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FHFA OGC
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Washington, DC 20024

Delivered via email: eminentdomainOGC@fhfa.gov

Comment letter on Federal Register Notice No. 2012-N-11 ("Use of Eminent Domain to Restructure Performing Loans")

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On behalf of the Alliance of Californians for Community Empowerment (ACCE), thank you for the opportunity to comment on the use of eminent domain to restructure performing loans. ACCE is a non-profit community organization with over 11,000 members in low and moderate income neighborhoods across California. Our members come together to address community issues and push for policies that help lift up families and communities...

ACCE has been working tirelessly over the past several years to save our communities from the foreclosure crisis. ACCE formed the Home Defenders League in the Fall of 2010 in order to help struggling and underwater homeowners organize, raise their voices and advance solutions that save homes and save neighborhoods. Our organization worked closely with Attorney General Harris and other advocacy groups around the multi-state attorneys general settlement with the banks and then on passage of the landmark Homeowner Bill of Rights this July.

ACCE was surprised and concerned to see the FHFA's request for comments on local use of eminent domain to restructure private loans. The actions under consideration by the FHFA are not specified in the request for comments. However, any aggressive effort by the FHFA to use its regulatory or market powers to interfere in a local government decision making with respect to private loans would represent a significant overreach of the powers granted under the FHFA conservatorship.

Alliance of for Community Empowerment

San Diego Orange County Los Angeles San Bernardino Fresno Sacramento Contra Costa Oakland San Francisco San Mateo San Jose

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We believe strongly that our communities and our local elected officials have the right to use eminent domain to address the underwater housing crisis. The public benefit to addressing this issue is clear. Our organization has studied, and released reports on, the impact of foreclosures and underwater homes on the broader community. The crisis is having a devastating fiscal impact on our neighborhoods, cities and counties. The harm includes reduced property taxes, increased vacancy and crime, and numerous negative impacts on the local economy.¹

As long as homeowners are unable to restructure loans to reflect current market conditions, these negative impacts will continue. Underwater but currently performing loans will continue to transition to default at high rates, and the financial burden of paying off unrealistically valued loans will continue to depress local economies.² These negative effects will in turn affect the valuation of private label securitizations in the absence of any use of eminent domain.

To our knowledge, the proposed uses of eminent domain at the local level are uniformly aimed at loans originated for private label securitization ("PLS") trusts. There is no proposed use to acquire whole loans owned by or pledged to the Federal Home Loan Banks or the GSEs, or owned by trusts the beneficial interests of which are guaranteed by the Government Sponsored Entities ("Federal Loans"). There is thus no direct connection with FHFA activities.

The request for comment expresses concern that this use of eminent domain may impact the value of PLS held in the portfolios of Government Sponsored Entities (GSEs), and also that it may exert an unspecified general "chilling effect" on the willingness of investors to extend credit to homebuyers. Yet this is true of numerous actions by state and local governments and by the courts. State and local fiscal decisions (such as increasing taxes or cutting spending) may directly impact the ability of homeowners to pay their mortgages. (In this recession such state and local decisions have indeed had a profound impact on the housing market). Zoning decisions directly affect housing valuations. Decisions by courts and states and local governments regarding consumer protections in lending may affect the terms on which credit is extended.

The GSEs play a central role in the housing markets. In turn, there is a deep connection between housing markets and the U.S. economy and financial markets. This means that a very wide range of governmental and legal actions may indirectly affect the value of GSE portfolios or impact financial markets that are related to the GSEs housing mission. This does not mean that the FHFA has a generalized license to exert its regulatory or market powers to affect such decisions. Such an expansion of the FHFA's authority goes beyond the remit Congress granted in its conservatorship. For the GSEs to expand their regulatory authority to govern any activities that occur within the housing markets or that impact the housing markets would be deeply problematic.

¹ cite

² cite

Adding to the concern, what is at issue here is a long-established constitutional mechanism that serves a clear public policy purpose and is already subject to multiple democratic and legal controls. Eminent domain is an important tool used by local governments to address many issues within their jurisdictions. This tool is subject to extensive legal controls enforced by the courts, including the requirement that local governments fairly compensate for any eminent domain takings. Any use of eminent domain must be approved by both elected officials and the courts that hold jurisdiction. Due to the requirement of fair compensation, courts will be directly addressing the concerns expressed by the FHFA regarding fair compensation to investors. These are properly matters within the jurisdiction of the legal system.

If there were no barriers to renegotiation, some of these problems would normally be addressed through private restructuring of loans to reach a mutually beneficial valuation of the loan that better reflected ability to pay and current market conditions. However, the structure of private label securitizations renders this very problematic. Experts at Amherst Securities have concluded that PLS trusts create significant impediments to resolving underwater loans, particularly ones that are current but highly likely to default, and that properly executed eminent domain programs can increase realized value for PLS investors.³ It is thus appropriate for local governments to protect their communities by purchasing these PLS loans for fair value and refinancing them in order to prevent the costs to the communities of defaults and foreclosures.

Under our federal system, this process is properly conducted within the sovereign powers of states and localities. If there are issues concerning proper reimbursement to investors, or whether the use of eminent domain is justified by public policy concerns, these issues are properly adjudicated by the courts. The FHFA should not overstep its authority by using its market power or regulatory actions to interfere with this process.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Amy Schur', written in black ink.

Amy Schur, Executive Director

³ See Amherst Securities Group LP, "Creative Uses of Eminent Domain – Implications for PLS Trusts" (June 28, 2012), page 2.