American Federation of Labor and Congress of Industrial Organizations

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September 7, 2012

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
c/o Office of General Counsel
400 7th St SW, Eighth Floor
Washington, DC 20024

By email: *eminentdomainOGC@fhfa.gov*

Dear Acting Director DeMarco:

On behalf of the AFL-CIO, thank you for the opportunity to comment on the Federal Housing Finance Administration notice No. 2012–N–11, "Use of Eminent Domain to Restructure Performing Loans." I encourage the FHFA to support the use of eminent domain to reduce principal amounts for underwater mortgages. Eminent domain empowers local communities to restructure underwater mortgages that are acting as a drag on housing markets, municipal budgets and the broader economy.

The AFL-CIO is the country's largest labor federation and represents 12.2 million union members. Union-sponsored pension and employee benefit plans hold more than $480 billion in assets. Union members also participate in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. Pension funds are in the best position to provide for the retirement security of their beneficiaries when the economy is growing.

Broad-based principal reductions are essential to stabilize the housing market

The housing market is one of the most important sectors of our economy, and our economy cannot recover, grow, and create jobs until the housing market is healthy again. As long as financial institutions continue to struggle under the weight of unrecognized real estate losses, they will be reluctant to lend to consumers and small businesses. The ongoing foreclosure crisis is also taking a serious toll on already-reeling state and local government budgets as property values tumble.

The AFL-CIO believes that broad-based reductions in mortgage principal are the most effective way to stop the foreclosure crisis and stabilize housing prices.[1] According to the real estate firm Zillow, more than 30 percent of homeowners with a mortgage are under water. In total, U.S. borrowers owe $1.2 trillion more than their homes are worth.[2] With 7.4 million to 9.3 million homes at serious risk of default in the coming years, there is no end to the housing and foreclosure crisis in sight.[3]

Principal reduction is needed to stop home price deflation and prevent a housing market over-correction. Homeowners who owe significantly more on their mortgages than their homes are worth are more than six times more likely to default than those who have positive equity.[4] At the same time, foreclosures put downward pressure on home prices.[5] This cycle creates a negative feedback loop – negative equity leads to more foreclosures and foreclosures put downward pressure on home prices.

Eminent domain is a tool for local governments to stabilize housing markets

The use of eminent domain to restructure underwater mortgages is a novel use of a power that local governments have long held to take property for public use. Eminent domain traditionally has been used to consolidate fragmented real estate interests. The fragmented ownership of mortgage backed securities is one reason why homeowners at risk of foreclosure have experienced difficulty negotiating mortgage modifications that are net present value positive for investors.

Local courts are well equipped to determine just compensation when real estate interests are taken through eminent domain. To the extent that mortgage backed

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[1] AFL-CIO Executive Council Statement, "Fixing What is Wrong With Our Economy," March 14, 2012 *available at* http://www.aflcio.org/About/Exec-Council/EC-Statements/Fixing-What-Is-Wrong-With-Our-Economy.
[2] Zillow, Negative Equity Report, *available at* http://www.zillow.com/visuals/negative-equity/#4/39.98/-106.88.
[3] Testimony of Laurie S. Goodman, Amherst Securities Group to the U.S. Senate Subcommittee on Housing, Transportation and Community Development, "Strengthening the Housing Market and Minimizing Losses to Taxpayers," Mar. 15, 2012 *available at* http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=0f96e0ff-8500-41a5-a0f2-0139d0df2e07.
[4] Goodman, Laurie et al; "The Case for Principal Reductions," The Journal of Structured Finance, Fall 2011. According to Goodman, combined loan-to-value (CLTV) ratios are the single most important factor in predicting default; mortgages with a CLTV of less than 80 percent have a default rate of 2.5 percent while mortgages with a CLTV of 140 percent or more default at a rate of 16 percent.
[5] *See* Podmolik, Mary Ellen; "A new take on impact of foreclosures on home values," Chicago Tribune, Aug. 23, 2012.

securities are already properly valued on investors' books, eminent domain takings will not result in additional losses. Local governments that use eminent domain to restructure underwater mortgages serve a public use – to stop the downward spiral of house prices, to prevent neighborhood blight, and to preserve property tax revenues.

Used in this way, eminent domain provides local governments with a mechanism to reduce the outstanding principal of underwater mortgages. Existing foreclosure prevention efforts have not been sufficient to address the scale of the foreclosure crisis. By providing local governments with a new tool to prevent foreclosures, restructuring underwater mortgages through eminent domain will stabilize home prices, and ultimately help preserve the assets of Fannie Mae and Freddie Mac.

Conclusion

The U.S. economy cannot recover until decisive action is taken to address the foreclosure crisis. Local governments have the power to use eminent domain to stop the downward spiral in housing prices. For these reasons, I urge the FHFA to support decisions by local governments to use their constitutional rights to exercise eminent domain to restructure underwater mortgages.

Sincerely,

Brandon J. Rees
Acting Director, Office of Investment

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opeiu #2, afl-cio