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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 Americans for Financial Reform, thank you for the opportunity to comment on the use of eminent domain to restructure mortgage loans. Americans for Financial Reform (AFR) is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups as well as independent experts and academic economists.

AFR 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 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 its powers.

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. Even assuming, arguendo, that some impact was possible, this would not justify interference by FHFA. Numerous actions by state and local governments and by the courts may impact housing markets. State and local fiscal decisions (such as increasing taxes or cutting spending) may directly impact the ability of homeowners to pay their mortgages and thus the

value of private loan securitizations. (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. It would obviously be totally inappropriate for the FHFA to exercise jurisdiction over these decisions based on some hypothesized impact on GSE portfolios or on the housing market in general. This is especially true since (as discussed below) the eminent domain process includes establishing fair value compensation for portfolio investors in private securitizations.

Eminent domain is a traditional, constitutionally established local power. The courts' jurisdiction over this power is intended to ensure that private parties (in this case, investors) are fairly compensated for any takings. The argument for the public benefit of eminent domain in this case is clear and a matter of pressing urgency. The housing crisis has caused enormous harm to the cities and counties in the United States and to their residents. This crisis is not over. Nonpartisan experts estimate that some 7 to 9 million additional foreclosures will result from the backlog of underwater and delinquent mortgages remaining in the U.S.¹ The harm to local communities created by these foreclosures will include reduced property tax revenues, increased vacancies, more crime, and various negative economic spillover effects.² There will also be broader effects on the economy and the labor market.³ The Federal Reserve has identified continuing weaknesses in the housing markets as a significant barrier to vigorous economic recovery.⁴

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 harm families and depress local economies. These negative effects will also adversely affect the valuation of private label securitizations even in the absence of any use of eminent domain to restructure loans. In fact, the GSEs own calculations show that absent any intervention, the expected remaining cumulative default rate of the collateral pool backing private subprime securitizations originated in 2004 or after is over 72 percent. Estimated remaining defaults on Alt-A securitizations originated in the same time period range from 20 percent to 58 percent.⁵ These massive predicted losses on private securitizations show that there is ample room for investors (including the GSEs) to be compensated at fair value for these securities, while still assisting underwater homeowners and aiding local economies through loan restructuring.

¹ [Testimony of Laurie S. Goodman](#), Amherst Securities Group To the U.S. Senate Subcommittee on Housing, Transportation and Community Development Re Strengthening the Housing Market and Minimizing Losses to Taxpayers, Mar. 15, 2012.

² Kingsley, G. Thomas et. al, [The Impacts of Foreclosures on Families and Communities](#), The Urban Institute, May, 2009.

³ Mian, Atif R., Sufi, Amir and Trebbi, Francesco, [Foreclosures, House Prices, and the Real Economy](#) (May 25, 2012)

⁴ Staff White Paper, "[The U.S. Housing Market: Current Conditions and Policy Considerations](#)", Board of Governors of the Federal Reserve System, January 4, 2012.

⁵ See page F-60, Federal National Mortgage Association, [Form 10-K For the Fiscal Year Ending December 31, 2011](#).

As has been well documented, the market restructuring of private loan securitizations through voluntary action is extraordinarily difficult. The structure of these securitizations subdivides ownership between investors in complex ways that block loan renegotiations that would otherwise create net collective benefits. To handle coordinated management of the loans, actual management rights are given to servicers. However, servicer incentives are hopelessly conflicted and do not support loan renegotiation.⁶ It is thus within the rights of local governments to seek to solve this collective action problem and protect their communities by purchasing these privately securitized loans for fair value and refinancing them in order to prevent the costs to the communities of defaults and foreclosures.

The FHFA lacks both the legal authority and the substantive policy justification to interfere in this process. Under our federal system, states and localities are granted sovereign powers of eminent domain to address situations where public action brings significant benefits that can be obtained in no other way. Issues concerning proper compensation to investors and the justification of the use of eminent domain in specific cases are properly delegated to adjudication by the courts. The FHFA should not overstep its authority by using its market power or regulatory actions to interfere with this process.

Thank you for the opportunity to comment on this Federal Register Notice. For any questions, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

Americans for Financial Reform

⁶ There is an extensive literature discussing these issues. For a summary, see Levitin, Adam J. and Twomey, Tara, [Mortgage Servicing](#), Yale Journal on Regulation, Vol. 28, No. 1, 2011.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company

- Home Actions
- Home Defenders League
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal

- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG

- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG

- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin

- UNET

