CALIFORNIA ASSOCIATION OF REALTORS®

September 7, 2012

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eight Floor
400 Seventh Street, SW, Eighth Floor
Washington, DC 20024

Re: Use of Eminent Domain to Restructure Performing Loans; No. 2012-N-11

Dear Mr. Pollard:

On behalf of the more than 150,000 members of the CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.), I am submitting the following comments in response to the Federal Housing Finance Agency's (FHFA) request for input on the proposed use of eminent domain to restructure performing loans. After careful analysis and examination of this plan and the issues surrounding it, C.A.R. and its members oppose the proposed use of eminent domain to seize "underwater" (i.e. negative equity) but performing loans and restructure their terms. We note that none of the proposals to date have suggested action against loans either made or held by federal entities, including those under FHFA supervision, nor does the proposed taking apply to non-performing loans. C.A.R. has serious concerns regarding both the proposal now being considered in San Bernardino, and with any possible expansions of the proposed mechanism. The negative impact of this plan on the real estate marketplace should lenders, investors and most especially the FHFA respond by constricting the availability of mortgage capital would be disastrous for our marketplace.

Over the last several months the idea of using eminent domain to seize underwater mortgages has been discussed at the local government level across the state of California. The proposal, a model suggested by a private investment company, Mortgage Resolution Partners (MRP), is being considered by the county of San Bernardino, along with the cities of Ontario and Fontana in California's Inland Empire region.

It is important to note that C.A.R.'s members are residents in the communities they serve and are sensitive to the difficulties homeowners face in the San Bernardino County area (the "Inland Empire") and throughout the state. C.A.R. has supported multiple programs at every level designed to help troubled homeowners stay in their homes. These include the Home Affordable Modification Program, the Home-for-Homeowners program, Keep Your Home California and even co-hosting foreclosure avoidance seminars, just to name a few.

While we applaud local officials' efforts to continually search for innovative solutions to expedite a full economic recovery, we cannot support this proposal. The use of eminent domain to seize underwater performing loans, alter their loan terms, and then resell them to another investor is both a violation of the "public use" requirement of eminent domain as well as a possible violation of contractual rights in violation of the constitution. C.A.R. is hopeful these communities will work with their troubled homeowners to increase usage of the many available local, state and federal programs that are already available.

Of even greater concern to C.A.R. are the negative long term ramifications of the program on future homebuyers in the area through higher lending costs and a constriction of mortgage capital. C.A.R. is concerned that implementing an eminent domain program to seize performing mortgages will force lenders to offset the costs and risks involved with lending in these communities with higher fees and rates that will price many homebuyers out of the market.

As the conservator of Fannie Mae and Freddie Mac, which account for approximately 60 percent of California's mortgage market, C.A.R. believes FHFA should take a measured response in exercising its authority over the availability of mortgage capital should this program be implemented. Homeowners in San Bernardino and the rest of California's Inland Empire have seen their housing market begin to stabilize over the last few years. Home prices have begun increasing, inventories (especially of foreclosure properties) are declining, and demand for homes is high by both homebuyers and investors. While the housing market has begun to recover, that recovery is at risk if the availability of financing is impaired. A sudden freeze of mortgage capital, or even a significant increase in its cost could have a severe negative effect on the area's recovery.

We appreciate the FHFA's consideration of C.A.R.'s comments on this issue. Please do not hesitate to contact Matt Roberts, C.A.R. Federal Government Affairs Manager, at (213) 739-8284 or by email at matthewr@car.org.

Sincerely,

LeFrancis Arnold

LeFrancis Arnold
2012 President
California Association of REALTORS®