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Dear Sir or Madam:

We write in response to the request for comments by the Federal Housing Finance Agency (No. 2012-N-11) on the use of eminent domain to facilitate refinancing of underwater mortgages.

The **Center for Popular Democracy** (CPD) is a national organization that builds organizing power to transform the local and state policy landscape through deep, long-term partnerships with leading community-based organizing groups nationwide. CPD's partner organizations work directly in the communities most impacted by the ongoing foreclosure crisis. It is clear, viewed from the frontlines, that these communities are in dire need of help to stem the ongoing impact of the mortgage crisis.

Extent of the Problem

Solving the problem of underwater mortgages is essential to keeping homeowners in their homes, avoiding blight, and successfully addressing the housing crisis. The real estate database Zillow reports that 30 percent of mortgages nationwide are underwater, and somewhere between half a million and 2.5 million homes are in the private securities trusts that would be affected by use of eminent domain.

Underwater homes are much more likely to be abandoned, which leads to decay and blight, driving away business, depressing property values of neighbors and communities, and putting further strain on local governments in crisis. The risk of default and foreclosure is incredibly high: Amherst Securities reports that homes with a combined loan-to-

value ratio of 140 percent or more have a default rate of 16 percent, more than quintupling the 2.5 percent default rate of homes with a combined loan-to-value ratio under 80 percent. Other sources put the number even higher.

With relatively little help from the federal and state level, and no sign of resurgence in home values, local governments using their constitutional eminent domain powers to purchase these underwater mortgages and refinance them will ensure that Americans across the country receive much-needed help. More people will be able to stay in their homes, and communities and neighborhoods will avoid the decay so often accompanying foreclosure. The economy itself will most likely see improvement as well; homeowners, with lower monthly mortgage payments, will have more money available to spend on consumer goods, infusing critical resources in local economies and generating job growth.

FHFA Concerns:

The FHFA raises a number of concerns, reflective of the bond and mortgage industry claims over this issue, about the impact of the use of eminent domain to purchase underwater mortgages to facilitate refinancing and principal reduction. Analysis and research indicate, however, that the concerns are misplaced.

Legal Issues:

The right of eminent domain permits governments to seize private property, after compensating the owner the fair market value of that property, to further the public good. It cannot be contested that intervening in the ongoing housing crisis, which daily impacts working communities, would serve the broad public good. The Supreme Court has upheld using eminent domain to raze both blighted and non-blighted areas to spur economic growth for the public good. *Berman v. Parker*, 348 U.S. 26 (1954), *Kelo v. City of New London*, 545 U.S. 469 (2005). Furthermore, court precedent makes clear that the right of eminent domain extends to investments, including mortgage-backed bonds and other securities in question here. Notably, it is for local governments – not a federal agency – to determine what is in the interest of the public good in this particular situation, and to pursue the use of eminent domain to further that good.

The FHFA also points to concerns about the application of consumer protection laws. To be sure, all actors in the eminent domain process would be required to follow all legal rules and protections that would apply, and communities – as well as investors – would monitor the situation to ensure compliance across the board.

The Impact of Purchase on Investors and the Mortgage Market as a Whole

The industry has raised concerns both that they will not be fairly compensated for the purchase of these assets, and that the use of eminent domain to permit refinancing of underwater mortgages will negatively impact the market as a whole. On the first point, the process of eminent domain *requires* that assets be purchased at fair market value. While the assets in question are, of course, worth less than they were a few years ago –

hence the whole problem – investors *would* be fully compensated at market value for these assets. Eminent domain requires this. The FHFA also raises the question of the capacity of localities to properly value these assets. However, the market already values such mortgages daily – and localities would simply use these accepted models and tools to arrive at the proper fair market value for assets it seizes.

Concerns have also been voiced that intervention will have a negative overall impact on the industry, with lenders refusing to do business in communities that pursue this strategy and lending rates jumping. First, redlining low income communities of color, where eminent domain may be used, is illegal. Second, governments have previously used eminent domain to condemn bondholder rights, residential rental real estate, corporate stock and other assets – all without chilling those critical markets. Resolving the mortgage crisis, and returning impacted communities to stability and financial health, will in fact facilitate our return to regular lending patterns.

Notably, the ability of eminent domain to “unlock” these otherwise locked trusts in fact offers an opportunity to *increase* value for trust investors – an increase that will rebound to investors, to the GSEs and to the taxpayers.

The Role of Courts in the Process and Costs and Fees to the Program

The FHFA raises legitimate concerns about the potential cost, in public dollars, of a process that will necessarily involve court intervention. While fair, it should be noted that the likely cost associated with this program *pale* in comparison to the cost to the public of allowing the mortgage crisis to continue unabated. Furthermore, courts are free to implement systems to expedite cases involving eminent domain, to lower costs and speed the process.

In conclusion, we are quite concerned that the FHFA appears opposed to one of the most innovative strategies proposed to address the ongoing threat to homeowners with underwater mortgages held in private securitized trusts. It is clear that assets bought through eminent domain will be fairly valued, that unlocking these trusts, in fact, frees up value that benefits investors, that threats of a “chilling” effect are overblown and hint at the possibility of impermissible red-lining, and that this strategy meets all constitutional and legal requirements.

We appreciate that the FHFA is seeking public comment on what is clearly a novel strategy to address the ongoing mortgage crisis impacted so many communities across the country. We urge the FHFA fully consider the issue, and the analysis we outline

above, and to conclude – like so many communities across the country – that the use of eminent domain to facilitate restructuring at-risk mortgages is a reasonable approach to the health, financial stability, and welfare of all of us.

Sincerely,

A handwritten signature in black ink that reads "Amy Carroll". The signature is written in a cursive, flowing style.

Amy Carroll, Esq.
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