



Credit Union National Association

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734

cuna.org

September 7, 2012

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

Filed via email: eminentdomainOGC@fhfa.gov

Dear Mr. Pollard:

This comment letter, on behalf of the Credit Union National Association, is in response to the Federal Housing Finance Agency's notice published in the Federal Register August 8 on the proposed use of eminent domain some municipalities are considering to seize certain underwater residential mortgage loans. By way of background, CUNA is the largest credit union advocacy organization, representing approximately 90% of the nation's nearly 7,000 state and federal credit unions that serve about 95 million members.

Under this approach, private investors would provide funds to local governments to compensate current lenders for the affected loans. The rights to the loans would be transferred to the private investors, which would restructure the mortgages to provide more affordable payments to the borrowers. The new loans could be held or sold by serious concerns about the use of eminent domain as a means to achieve relief for distressed home mortgage borrowers. We do not believe that ultimately the proposed approach would provide the level of relief to affected homeowners, communities, and securitizers that some have predicted.

A number of stakeholders have expressed views as to whether the use of eminent domain to seize underwater mortgages in the manner several municipalities are reportedly considering would be constitutional. Well-articulated arguments regarding the concept's constitutionality have been developed by advocates on both sides of the issue. It is not our intent to review those arguments in this letter.

However, there is one point that both sides may agree on, and that is, if implemented, the proposed use of eminent domain will be challenged in the courts. If that highly likely outcome results, affected homeowners may be even worse off as courts



OFFICES: | WASHINGTON, D.C. | MADISON, WISCONSIN

struggle, perhaps for years, with issues such as how to value the loans and properties involved so that “just compensation” may be provided, consistent with the U. S. Supreme Court’s interpretations of the “takings clause” of the U.S. Fifth Amendment.¹

In light of the very serious uncertainties as to how the proposal would fare in court and how consumers would actually be affected, CUNA does not support this approach and agrees the Federal Housing Finance Agency was correct in raising concerns. We urge the FHFA to continue its opposition.

If you have questions or would like further information relating to our comment letter, please contact me at 202-508-6736.

Sincerely,



Mary Mitchell Dunn
CUNA Deputy General Counsel and Senior Vice President

¹ Kelo v. City of New London, 545 U.S. 469, 125 S. Ct. 2655 (2005).