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September 7, 2012

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor
400 7th St., SW
Washington, DC 20024

[Transmitted by e-mail to eminentdomainOGC@FHFA.Gov]

Dear Mr. Pollard:

On behalf of the one million members of the National Association of REALTORS® (NAR), I am submitting NAR's comments on the Federal Housing Finance Agency's (FHFA) request for input on the proposed use of eminent domain to restructure performing loans. REALTORS® have concerns over the proposal due to the potential implications these proposals may have on the future of mortgage finance.

The National Association of REALTORS® is America's largest trade association, including NAR's eight affiliated Institutes, Societies, and Councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

Background

A private investment company, Mortgage Resolution Partners (MRP), has proposed facilitating the purchase of underwater mortgages currently held in non-agency, mortgage-backed securities by local government agencies. Under the proposal, local governments would use eminent domain authority to take from investors the loans of underwater homeowners who are current on their payments, and compensate those investors at a value below what is owed on the loan. Municipalities could then restructure the loan to an amount that reflects the current market value of the property. MRP first proposed this strategy in San Bernardino County, California, and several other municipalities are considering similar proposals, with the goal of reducing the number of underwater mortgages and thereby potentially reducing the risk of eventual defaults and the negative community effects that come with them. In an August 9, 2012 notice, FHFA expressed significant concerns about the use of eminent domain authority as proposed by MRP and invited input from interested parties.

Helping Families Stay in Their Homes and Stabilizing Neighborhoods

Though the proposal by MRP purports to assist borrowers, it does not help those who are experiencing hardships, are behind on their payments, and are most in need. REALTORS® understand the difficulties many homeowners face today, and recognize that the stabilization of housing values and neighborhoods depends on helping those homeowners experiencing hardships. To this end, NAR supports measures to broaden the opportunities that families who are at risk of foreclosure have to stay in their homes. These efforts include the Treasury Department's Making Home Affordable Program and Senate bill S.3085, The Responsible Homeowners Refinancing Act of 2012, which provides more opportunities for on-time borrowers to refinance their mortgages at historically low interest rates. These types of programs provide stability to families and local housing markets without having the potential to adversely impact credit and mortgage availability.

Potential Risk to Mortgage Finance

In its notice on August 9, FHFA expressed significant concern with programs that could undermine and have a chilling effect on the extension of credit to borrowers seeking to become homeowners and on investors that support the housing market. NAR shares these concerns with regard to the MRP proposal. This novel use of eminent domain to seize performing mortgages, those for which the borrower is current on their payments, is sure to present new risks to investors in mortgage securities going forward.

Should the proposal be adopted, the value of an investment in mortgage securities would then have to account for the possibility that municipalities will seize the mortgages in the security at a reduced value, which is sure to lead to devaluation of mortgages as a secured asset. The risk of a future involuntary loan restructuring will result in a housing mortgage market with higher interest rates and potentially less liquidity, making it even tougher and more expensive for buyers to secure a mortgage.

Conclusion

REALTORS® believe the wide availability of affordable mortgage financing is a crucial element to a housing recovery. REALTORS® also recognize that prudent efforts to assist borrowers experiencing hardships have also played an important role. Bolstering refinancing, loan modification, and short sale efforts are all ways to help distressed borrowers avoid foreclosure without adversely impacting the future availability of mortgage finance. We share FHFA's concerns that proposals to use eminent domain authority to seize mortgages at discounted values will have a negative effect on the ability of future borrowers to obtain mortgages.

NAR appreciates the opportunity to share our concerns and provide input to FHFA on this issue and believes it is important for FHFA and other market participants to take a measured approach to the proposal in order to ensure continued stability and liquidity to the mortgage market.

If you would like to discuss our comments and concerns, please contact Charlie Dawson, NAR's Policy Representative for Financial Services, at 202.383.7522 or cdawson@realtors.org.

Sincerely,

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®