

FEDERAL HOUSING FINANCE AGENCY

[No. 2012-N-11]

Use of Eminent Domain to Restructure Performing Loans

AGENCY: Federal Housing Finance Agency.

ACTION: Notice; [input accepted](#).

The Federal Housing Finance Agency (FHFA) oversees the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks). Fannie Mae and Freddie Mac (the Enterprises) are operating in conservatorships with a core mission of supporting the housing market. FHFA's obligations, as conservator, are to preserve and conserve assets of the Enterprises and to minimize costs to taxpayers. The Enterprises purchase a large portion of the mortgages originated in the United States and they hold private label mortgage backed securities containing pools of non-Enterprise loans. The Banks likewise have important holdings of such securities. In addition, the Banks accept collateral that consists of mortgages of member financial firms pledged in exchange for advances of funds.

FHFA CONCERNS

FHFA has significant concerns about the use of eminent domain to revise existing financial contracts and the alteration of the value of Enterprise or Bank securities holdings. In the case of the Enterprises, resulting losses from such a program would represent a cost ultimately borne by taxpayers. At the same time, FHFA has significant

concerns 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.

FHFA has determined that action may be necessary on its part as conservator for the Enterprises and as regulator for the Banks to avoid a risk to safe and sound operations and to avoid taxpayer expense.

Among questions raised regarding the proposed use of eminent domain are the constitutionality of such use; the application of federal and state consumer protection laws; the effects on holders of existing securities; the impact on millions of negotiated and performing mortgage contracts; the role of courts in administering or overseeing such a program, including available judicial resources; fees and costs attendant to such programs; and, in particular, critical issues surrounding the valuation by local governments of complex contractual arrangements that are traded in national and international markets.

INPUT

FHFA will accept input from any person with views on this subject through its Office of General Counsel (OGC), no later than September 7, 2012, as the agency moves forward with its deliberations on appropriate action. Communications may be addressed to FHFA OGC, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024, or emailed to FHFA OGC at eminentdomainOGC@fhfa.gov. Communications to FHFA may be made public.

Dated: August 6, 2012

Richard Hornsby,
Chief Operating Officer, Federal Housing Finance Agency.

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