INDEPENDENT COMMUNITY BANKERS of AMERICA®

September 7, 2012

FHFA OGC
400 Seventh Street SW
Eighth Floor
Washington, DC 20024

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA) [1] welcomes the opportunity to share its thoughts with the Federal Housing Finance Agency (FHFA) regarding the use of eminent domain. Recently, several local governments have sought to use eminent domain to seize underwater mortgages so they may be refinanced.

The Federal Housing Finance Agency is asking for comments on the use of eminent domain as it may impact Fannie Mae, Freddie Mac and the Federal Home Loan Banks (FHLBs). The FHFA has significant concerns about the use of eminent domain to revise existing financial contracts and the alteration of the value of GSE security holdings. The FHFA states in its notice requesting input that in the case of Fannie Mae and Freddie Mac, resulting losses from such a program would represent a cost ultimately borne by taxpayers. (Though the FHFA did not state this, FHLB losses would impact members, many of which are community banks). The FHFA states it 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 investors that support the housing market. The agency states that it may need to take action in its role of conservator over Fannie Mae and Freddie Mac and as regulator of the FHLBs to avoid a risk to safe and sound operations and to avoid taxpayer expense. The FHFA points out that there are many questions about the use of eminent domain such as 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

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

critical issues surrounding the valuation of local governments of complex contractual arrangements that are traded in national and international markets.

ICBA agrees with the FHFA's concerns and strongly opposes the use of eminent domain to seize residential mortgages in order that they may be refinanced. We strongly believe that this effort, at best, would only help a relatively small number of borrowers, yet the hurtful consequences would likely go far beyond the communities using eminent domain. Eminent domain will like result in credit being much more difficult and expensive to obtain in those communities where it is used, if credit it is available at all. The cost of mortgages may increase for all borrowers should lenders fear a growing use of eminent domain. ICBA also has great concerns about the use of eminent domain on mortgage contracts and their enforceability. Community banks have told ICBA that they would not lend in communities that exercise eminent domain and we question whether any lenders would risk lending there.

We also believe that investors would be hurt as the value of mortgage-backed securities would fall as mortgages are seized or investors fear their seizure. Banks holding mortgages on their books in these cities and counties will likely need to increase reserves to cover the impairment of these loans. This would have a negative impact on capital and result in lower lending capacity at a time when the banks are looking to increase lending to help their communities. We are also concerned that use of eminent domain could spread to other types of assets and loan contracts as well, causing banks to withdraw from those markets altogether.

The much needed housing recovery now appearing across the country will halt and housing prices may once again fall due to the uncertainty the use of eminent domain will cause. The costs of using eminent domain will far exceed the value it brings to a relatively small group of borrowers. We believe the current negative equity refinance programs provided by the GSEs are a better way to help borrowers refinance and do not carry such deep consequences for borrowers and investors.

We appreciate the opportunity to comment on this important issue. Please contact me by email at ann.grochala@icba.org or by phone at 202-659-8111 if you would like to discuss our comments further.

Sincerely,

/s/
Ann M. Grochala
Vice President, Lending and Housing Policy