

American Bankers Association
American Council of Life Insurers
American Land Title Association
American Securitization Forum
Association of Mortgage Investors
Credit Union National Association
Financial Services Roundtable
Housing Policy Council
Independent Community Bankers of America
Investment Company Institute
Mortgage Bankers Association
National Association of Federal Credit Unions
National Association of Home Builders
National Association of Realtors
Securities Industry and Financial Markets Association

July 29, 2013

Dear Members of the U.S. House of Representatives:

The undersigned organizations urge you to support an amendment that may be offered to H.R. 2610, the Transportation and HUD Appropriations Act for Fiscal Year 2014, to prohibit the Federal Housing Administration (FHA) from insuring residential mortgages seized through eminent domain.

The amendment has become necessary because numerous communities across the country are considering a plan developed by a vulture fund that envisions using a municipality's eminent domain power to acquire performing but underwater mortgage loans held in private-label mortgage-backed securities and then insure the new loans through the taxpayer-backed FHA. According to press reports, the city of Richmond, California, is prepared to become the first in the nation to start seizing loans in this unprecedented manner.

Dear Members of Congress,

Numerous communities across the country are considering entering into an agreement with an investment fund called Mortgage Resolution Partners (MRP) that envisions using a municipality's eminent domain power to acquire performing but underwater mortgage loans held by private-label mortgage-backed securities (PLS) and then refinance the loans through programs administered by the Federal Housing Administration (FHA). The associations listed below are writing to strongly oppose this use of eminent domain.

Our organizations are sensitive to the plight faced by many homeowners across America, especially those in communities hardest hit by the housing crisis. Since 2007, the mortgage industry has completed more than six million permanent loan modifications, including more than one million loans through the Treasury Department's Home Affordable Modification Program (HAMP). Combined with the more than one million short sales, the total number of permanent, foreclosure-avoiding solutions now stands above 7.2 million.

While we support a broad range of programs to assist struggling homeowners and the communities in which they reside, we are firm in our belief that using the power of eminent domain in this manner would harm our nation's housing markets and the very communities it is intended to help.

The introduction of this new risk to the housing finance system would freeze the return of private capital to our markets at a time when many in Congress are looking for ways to increase the role of the private sector and decrease the federal government's footprint. This proposal by MRP would run counter to those efforts and would increase the risk exposure of the already-stretched FHA insurance fund.

The proposal targets a small percentage of loans that are in private-label securities and then narrows this group further to focus on those who are current on their existing mortgages, have good credit, and likely don't have existing home equity loans or other liens on the property. While the small group of people that satisfy these criteria would initially appear to be helped, they may impair their ability to sell their home to a future owner. Additionally, this help comes at the substantial expense of the entire community and other potential mortgage borrowers across the country and does not satisfy the public use requirement.

This proposed use of eminent domain raises very serious legal and constitutional issues. No jurisdiction has ever used eminent domain to acquire underwater mortgages in securitized pools, and such a use would trigger costly legal challenges with uncertain and uneven results across multiple states. We would point out that under the Fifth Amendment of the U.S. Constitution, eminent domain powers can only be exercised when the proposed taking is for a public use or benefit and when just compensation has been provided to the former owner of the property. The MRP proposal does not satisfy either requirement. Moreover, the mortgage note is typically held by the PLS trustee who is often domiciled outside of the state. A city's eminent domain authority does not extend beyond the city's borders; it certainly doesn't apply outside the state.

It is critically important to recognize who invests in private label mortgage-backed securities and who is therefore harmed if these mortgages are taken by eminent domain. More than a third of the approximately \$938 billion currently held in PLS is held in pension plans, annuities and other insurance products, and mutual funds. Thus, the PLS losses are suffered not by large institutions but by every day savers and investors who have these investments in their pension and 401(k) plans, their college savings plans and their individual investment portfolios. Fannie Mae, Freddie Mac and the Federal Home Loan Banks also own hundreds of billions of dollars of PLS. The Federal Housing Finance Agency (FHFA), which is the conservator of Fannie Mae and Freddie Mac and the regulator of Federal Home Loan Banks, has expressly stated that should a community implement this plan "action may be necessary on its part to avoid a risk to safe and sound operations at its regulated entities and to avoid taxpayer expense."