Filed via: eminentdomainOGC@fhfa.gov

September 6, 2012

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

Dear Mr. Pollard:

Re: Use of Eminent Domain to Restructure Performing Loans

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to provide comments to the Federal Housing Finance Agency (FHFA) regarding its notice and request for input on the use of eminent domain by local governments to restructure performing loans. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million members. Credit unions in California and Nevada have $36.1 billion in first mortgage loans outstanding, and $10.4 billion in outstanding real property loans secured by an interest on the property other than a first mortgage lien.

Under plans such as the "Homeownership Protection Plan" being developed by San Bernardino County, mortgage loans would be seized from private investors through condemnation in order to force a restructuring of the mortgage. While the Leagues agree that assisting borrowers and reviving the housing market are important priorities, we are very concerned about the use of eminent domain in this fashion. We believe that it raises serious legal and constitutional issues by significantly weakening the essential, foundational nature of contractual relationships between a borrower and creditor. If eminent domain were used to seize loans, investors in these loans through mortgage-backed securities or their investment portfolio would suffer immediate losses and likely be reluctant to provide future funding to borrowers in these areas. This would have the effect of significantly reducing credit availability for home purchases and refinancing in the San Bernardino area and other areas that undertake similar actions.

Further, for institutions such as credit unions that have historically held these loans in portfolio rather than sell them, the spread of eminent domain use in this fashion could be devastating. A loss by California and Nevada credit unions of 30 percent of their mortgage loans through eminent domain would wipe out their retained earnings. As you may be aware, credit unions are financial cooperatives—that is, owned by their members. Therefore, such losses would

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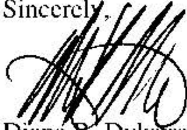
ultimately be borne by millions of credit union member-owners (nationwide, credit unions serve over 90 million members). Such losses could force credit unions which have a long history of providing lower fees, higher deposit rates, and lower loan rates than banks—to consider charging more or higher fees, or reducing or eliminating services.

California and Nevada credit unions are committed to assisting struggling borrowers, having made more than 11,000 modifications and solutions on first mortgage and junior lien-secured loans since 2008. However, we believe that using eminent domain is not the right approach. We remain very concerned that by abrogating contractual agreements between borrowers and creditors, thereby weakening investor confidence in mortgage-backed securities, the use of eminent domain would have far greater and lasting negative effects on existing and future homeowners, and subsequently the very communities and residents these local governments wish to help.

I thank you for the opportunity to share our concerns.

Sincerely,



Diana R. Dykstra
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