NCSHA

September 7, 2012

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

RE: No. 2012–N–11

Dear Mr. Pollard:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) notice expressing concerns about recent local government proposals to use eminent domain to purchase and refinance mortgages. We share FHFA's concerns about the possibility that these proposed initiatives could reduce the value of loans owned by investors and guaranteed by Fannie Mae, Freddie Mac, and some federal agencies with mortgage insurance or guarantee programs. We are also concerned about the impact such initiatives may have on lenders' willingness to extend credit to new homebuyers, particularly in affected communities. We recommend that the FHFA discourage the implementation of such initiatives until these concerns can be fully addressed and the potential negative consequences can be avoided or eliminated.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of supporting affordable housing lending help to those who need it. To finance affordable housing for homebuyers and renters, HFAs issue mostly tax-exempt bonds. HFAs also administer a wide range of affordable housing and community development programs, including HOME, down payment assistance, homebuyer education, loan servicing, the Low Income Housing Tax Credit, Section 8, homeless assistance programs, and state housing trust funds.

HFAs have proven over many decades that affordable housing lending done right is good lending. HFAs do it right in the case of first-time homebuyer lending through a time-tested combination of low-cost financing; traditional fixed-rate, long-term products; flexible, but prudent, underwriting with careful credit evaluation; diligent loan documentation and income verification; down payment and closing cost assistance; homeownership counseling; and proactive servicing.

When providing affordable home financing to low- and moderate-income homebuyers, HFAs usually partner with private loan originators. While HFAs use a variety of funding techniques, usually a private lender will originate a loan and sell it to the HFA. HFAs will then package these loans into tax-exempt Mortgage Revenue Bonds (MRB) or mortgage-backed securities (MBS) and sell them to investors, utilizing the proceeds from these sales to finance more affordable home loans. In some cases HFAs sell bonds first, then use the proceeds to finance new mortgages.

HFA mortgage financing programs, which have proven to be very effective over the years, would be severely hampered if local or state governments use eminent domain to seize performing home loans and alter their terms. Such initiatives would cause uncertainty and likely create significant losses for lenders and investors. Banks and other lending institutions are likely to restrict their home lending in jurisdictions with eminent domain programs because they will be concerned that any loan they issue might eventually be seized, forcing the bank to take a loss.

What loans lenders do issue in areas with eminent domain programs are likely to be available only to borrowers with higher incomes who can afford to make large down payments, and lenders will add costs to accommodate the risk that the loan could be taken away. Some lenders may completely avoid extending home loans with affordable terms to low- or moderate-income borrowers. In addition, many investors will likely stop purchasing such loans or securities backed by such loans, and those investors continuing to purchase such loans and securities will likely lower the price they are willing to pay or increase the yield they demand to cover the increased risk of loss. This would further hinder HFAs' efforts to provide affordable home financing for borrowers in these municipalities, as they will find it difficult to sell such loans to investors as part of MRBs or MBS. Decreased volume and lower return on their programs will further limit HFAs' ability to finance additional affordable loans and to provide other benefits to borrowers, such as down payment or closing cost assistance.

Lenders and investors might also fear that other communities will adopt their own eminent domain programs, prompting these lenders and investors to curtail their involvement in the home lending market. Lenders may tighten their lending standards and increase costs for borrowers in all parts of the country and investor interest in MBS could drop precipitously. This would have a deleterious effect on an already struggling housing market at a time when our nation is suffering from a significant shortage of available affordable housing.

Furthermore, the use of eminent domain to alter financial transactions will set a dangerous precedent that could have widespread repercussions for the entire home lending market. Contract integrity, permanence, and enforceability are crucial to the proper functioning of any healthy market. Such eminent domain programs, if allowed to proceed, would call into question a variety of legal contracts, which could have the effect of lowering lender and investor confidence in any mortgage loan, regardless of where the home is located. This could greatly curtail the ability of moderate-income Americans to secure affordable home loans no matter where they live.

NCSHA also agrees with FHFA's contention that the use of eminent domain to seize home loans could cause financial losses for the Government Sponsored Enterprises (GSEs)—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. Any threat to them is of major concern to HFAs, because the GSEs play a critical role in the financing of affordable home lending and have enjoyed strong, mutually beneficial partnerships with state HFAs. We urge FHFA to discourage communities from pursuing eminent domain programs that threaten existing loans and the continuing availability of affordable mortgage credit to low- and moderate-income homebuyers within those communities and more broadly.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives