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Invested in America

July 21, 2012

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

The Honorable Shaun L. S. Donovan
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

The Honorable Timothy F. Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner, Secretary Donovan, and Chairman Bernanke:

SIFMA[1] has serious concerns regarding the proposed use of eminent domain by San Bernardino County, California, and possibly other municipalities, to seize mortgage loans held in private-label mortgage-backed securities (MBS). This plan is being promoted to San Bernardino County and other entities by a private sector, profit-motivated entity called Mortgage Resolution Partners. Legal experts, including SIFMA's counsel, former Solicitor General Walter Dellinger, believe this use of eminent domain to be unconstitutional, among numerous other legal disabilities. In addition to a misuse of the law, attempts to seize loans in this manner would have devastating consequences to the private label mortgage markets, and quite possibly the entire home mortgage sector.

The uncertainty created by these actions would significantly harm mortgage markets and consumers. It would also impede the return of private capital to mortgage markets. Notably, the plan depends upon the use of government programs, particularly those of FHA and Ginnie Mae, and will shift risk to taxpayers. These actions would run counter to the national interest, and we ask that you vigorously oppose them, and deny any support for them.

The plan seeks private profits and provides no significant public benefits when aggregate costs and benefits are taken into account. In fact, it relies on public guarantees afforded by FHA. The proposed use of eminent domain is targeted solely to borrowers who are current on their mortgage, not those who have fallen behind on payments or nearing foreclosure. It will not help persons in greatest need, but rather persons whose mortgages provide the best returns to the promoters. Foreseeable foreclosures and ensuing neighborhood blight would not be reduced. A small sliver of borrowers might be helped, but all those seeking credit would be harmed as this action would most certainly result in investors seeking a significant risk premium for underwriting the risk of seizure by eminent domain. This is hardly a public purpose.

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

The proposal to use eminent domain is premised on using FHA and Ginnie Mae to refinance and resecuritize the seized loans. This use of FHA and Ginnie Mae would lock in a tremendous profit for the backers of the scheme, as the loans would be seized from MBS trusts at a level below their actual value to holders and sold at a premium in government guaranteed MBS. Given the legal uncertainty of this plan, significant risk would be shifted to the federal government and thus the taxpayers. HUD, in particular, must not sanction such unethical and questionable use of its programs. Likewise, the GSEs should not be forced into dealing in these loans thereby exposing taxpayers to the significant risks that such schemes would entail.

The profits of the plan would be taken from MBS investors and transferred to the plan's investors. This action would destroy MBS investor confidence, possibly irreparably. The impact this would have on the fragile housing and housing finance markets would be catastrophic. This circumstance is all the more distressing when we consider that the ultimate investors in these MBS are the pension funds, mutual funds, 401(k) plans, and other investment vehicles that millions of Americans use for retirement, education, and other savings. In essence, a wealth transfer would occur from the savings of working families to a secretive group of private investors cloaked by a limited liability company. Any progress made in promoting the return of private capital to mortgage markets will be reversed.

This week participants in the agency MBS market, acting through SIFMA, issued a statement of policy regarding eminent domain such that when municipalities or jurisdictions initiate the taking of any loans under the presumed authority of eminent domain, loans in that area will not be eligible for inclusion in TBA trading markets. This is a result of the significant, and unpredictable, risk that eminent domain programs would create for MBS investors. We also expect that lenders may react by underwriting loans defensively, resulting in higher credit costs and reduced overall credit availability. Already broken housing markets would be further injured.

We believe that efforts by municipalities to employ the power of eminent domain to seize mortgage loans are an abhorrent misuse of the power of the state. All relevant elements of the federal government, in particular those you manage -- the Department of the Treasury, HUD, and the Federal Reserve Board -- must speak clearly in objection to such plans as they will illegally penalize investors, irreparably damage the private mortgage market, increase risk to taxpayers, and undermine your efforts to reform the housing finance sector.

I would welcome the opportunity to meet to discuss this matter further.

Sincerely,

T. Timothy Ryan
President and Chief Executive Officer

CC: Mary J. Miller, Under Secretary for Domestic Finance, Department of the Treasury
Robert C. Ryan, Senior Advisor for Mortgage Finance, Department of Housing & Urban Development
Elizabeth A. Duke, Governor, Board of Governors of the Federal Reserve System