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September 7, 2012

VIA E-MAIL

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

RE: Docket Number FHFA-2012-0020: Use of Eminent Domain to Restructure Performing Loans

To Whom It May Concern:

The National League of Cities (NLC) appreciates the opportunity to share our views on the use of eminent domain. On behalf of over 19,000 cities, villages and towns we represent, NLC strongly supports the authority of local governments to exercise eminent domain for the public good. As an organization dedicated to helping city leaders build better communities, we view eminent domain as an indispensable local tool typically reserved for the most challenging problems such as preventing and reversing neighborhood decline, revitalizing stagnant economies, creating much-needed jobs, and generating revenue that enables cities to provide essential services. Any federal legislative or regulatory action that could impact local use of eminent domain is therefore a cause for concern.

NLC has no position on the use of eminent domain to restructure performing loans. In our view, decisions regarding the specific application and limits of eminent domain are best made by democratically elected state and local officials familiar with and accountable to their communities. Local elected officials recognize that eminent domain must be used prudently and with sensitivity to those who could be impacted. As part of a legislative process, with citizen input and discussion, eminent domain is one of the most powerful tools city officials have to rejuvenate their neighborhoods.

As a result of the collapse of the housing market and enduring fiscal uncertainty, communities across the country are struggling against daunting economic challenges. Ongoing difficulty in accessing credit for public and private entities has compounded the challenge of stabilizing neighborhoods significantly impacted by home foreclosure and vacant housing. When market failures such as these make it impossible for the private sector to invest in struggling neighborhoods, local use of eminent domain is often necessary to improve conditions and establish public-private partnerships.

In 2005, the Supreme Court held in *Kelo v. City of New London* that the “public use” provision of the “Takings Clause” of the 5th Amendment of the U.S. Constitution permitted the use of



eminent domain for economic development purposes that provide a public benefit. Following that decision, Congress and the states began passing legislation to put limits on the use of eminent domain. Forty-two states have adopted legislation and ballot measures that restrict to varying degrees local power to use eminent domain. These include provisions prohibiting eminent domain for economic development purposes, restricting eminent domain to blighted properties, defining what constitutes public use, and providing enhanced safeguards and compensation to affected property owners.

Given existing federal limits on eminent domain authority, and the differing limits specific to each state, we believe it would be imprudent for FHFA to take any blanket action with respect to the varying levels of authority to exercise eminent domain by state and local governments across the nation. Furthermore, given the severity of the impact of home foreclosure on neighborhoods in decline, and the seeming disinterest of many mortgage servicers and investors in federal incentive programs that reward actions that assist individual homeowners and prevent neighborhood decline, we urge FHFA to consider alternatives to actions that might penalize cities and towns for pursuing innovative strategies that overcome the complexity of issues that either permit or prevent assistance to homeowners based on transactions beyond their control.

Again, we appreciate the opportunity to share our views on eminent domain and the Agency's interest. If you have any questions concerning our comments, please feel free to contact our representatives listed below:

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