July 16, 2013

Dear Congressmember

We all know how devastating the housing crisis has been to our communities. And despite what we hear in the news, *this crisis is not over and our communities are not seeing the recovery.* Nationally, some 2 million families are currently delinquent on their loans and in the foreclosure pipeline and 14 million families are underwater on their mortgages. An estimated 7-9 million more foreclosures are coming down the pike.

Help for struggling homeowners, either from the federal government or from the banks, has been limited at best. The solution called for by many economists – to broadly reduce mortgage principal for underwater homeowners – has been resisted by the banks, blocked by Fannie Mae and Freddie Mac and prevented, in some cases, by loan servicing agreements.

<u>Tired of waiting on the banks or the federal government, community groups, civic leaders, and elected officials are taking action locally by developing programs that use eminent domain to reset mortgages, preserve homeownership, and aid local economies.</u>

The very Wall Street actors that caused this crisis in our communities in the first place are now working hard to prevent this local solution. Led by SIFMA (Securities Industry and Financial Markets Association), they are trying to get Congress, HUD and FHFA to block loans obtained through this sort of program from being insured by FHFA or eligible for HUD's FHA refinance program.

Please find the attached sign-on letter from leading fair housing, labor and community organizations urging you to: "reject any proposals mandating that HUD or the FHFA discriminate against homeowners in cities that make use of their eminent domain authority to achieve principal reduction."

We've also attached recent Op-Ed's by former Congressmember Brad Miller and by Robert Kuttner that further explain the local efforts we are referring to.

We trust that we can count on you to oppose these efforts by Wall Street to block a local solution to the housing crisis that has the potential of preventing tens of thousands of foreclosures and helping hard hit communities to cover.

Sincerely,

July 15, 2013

Dear Members of Congress,

We write out of deep concern over the financial industry's effort to promote legislation or administrative action that would undercut the ability of communities to find local solutions to the continuing housing crisis. **We urge you to watch for and reject measures that would mandate discrimination by federal agencies against mortgage loans made in communities that implement local principal reduction programs.**

Predatory and irresponsible lending practices by the nation's largest banks were at the root of the financial crisis that drove the country into the great recession and continues to hurt millions of families. The crisis has affected everybody and disproportionally hurt communities of color: underwater rates are approximately 50 percent higher among African American and Latino homeowners and in neighborhoods of color foreclosure rates are almost three times those in predominantly white areas.

A number of municipalities are now exploring ways to restore community wealth and inject money back into local economies by purchasing mortgages, through traditional eminent domain authority if necessary, and resetting the mortgages to fair market value so that homeowners can avoid foreclosure and begin rebuilding equity. These cities – including El Monte, La Puente and Richmond, California – have large African American and/or Latino populations that were hit incredibly hard by the mortgage crisis.

In response to these local proposals, the Securities Industry and Financial Markets Association (SIFMA) has formally announced its intention redline any communities that make use of this authority.[i] After decades of redlining and years of predatory and discriminatory lending (*i.e.*, reverse redlining), the Wall Street banks that are members of SIFMA are proposing steps that could once again deny credit to – or make credit more expensive for - communities of color.

Three of SIFMA's allies in Congress have recently asked the Federal Housing Authority to alter its rules so as to deny qualified homeowners access to FHA loans if the homeowners' cities have purchased their previous mortgage through eminent domain.[ii] SIFMA has also asked the Federal Housing Finance Agency to alter the regulations governing Fannie Mae and Freddie Mac so that those entities will not purchase new mortgages on such homes.[iii] In late June, SIFMA attempted to insert language into the appropriations bill for the Department of Housing and Urban Development that would mandate these discriminatory changes to FHA policies.

We urge you to reject any proposals mandating that HUD or the FHFA discriminate against homeowners in cities that make use of their eminent domain authority to achieve principal reduction. Introducing new policies to redline qualified buyers would undercut fair lending and housing laws and policies and have a disparate impact on communities of color. Such action Congress or federal agencies would be a slap in the face to the cities and towns that were hardest hit by the housing crisis and are now working with local citizens and tax payers to find democratic, local solutions to the problem.

Sincerely,

Action Now
Action NC
AFL-CIO
AFSCME
Alliance for a Just Society
Alliance of Californians for Community Empowerment
American Federation of Teachers
Americans for Financial Reform
Arkansas Community Organizations
California Reinvestment Coalition
Center for Popular Democracy
City Life/Vida Urbana
Civil Justice
Common Good Ohio
Communication Workers of America
Courage Campaign
Delaware Alliance for Community Advancement
Home Defenders League

Idaho Community Action Network
ISAIAH
Jewish Community Action
Leadership Center for the Common Good
Living United for Change in Arizona
Los Angeles Alliance for A New Economy
Maryland Communities United
Minnesota Neighborhoods Organizing for Change
Minnesotans for a Fair Economy
Missourians Organizing for Reform and Empowerment
National Association of Consumer Advocates
National Consumer Law Center
National Fair Housing Alliance
National People's Action
New Bottom Line
New Jersey Communities United
New York Communities for Change
PICO National Network
Public Justice Center
Rebuild the Dream
Right to the City Alliance
SEIU 32BJ
SEIU 775NW
SEIU 925
SEIU1021
SEIU Healthcare Minnesota
SEIU International
SEIU Local 26
SEIU Local 284
SEIU Local 503
SEIU Local 1199
Southsiders Organized for Unity and Liberation
UAW 4123
Washington Community Action Network
Working Families Party

Cc: Secretary of Housing and Urban Development Sean Donovan
Federal Housing Finance Agency Acting Director Edward DeMarco

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[i] See 7/19/12 SIFMA Press Release, at www.tinyurl.com/SIFMAdocuments, stating that "SIFMA is issuing this statement today to introduce a policy regarding the interaction of eminent domain with TBA trading. Loans to borrowers residing in areas that municipalities have initiated condemnation proceedings to involuntarily seize mortgage loans through their powers of eminent domain will not be deliverable into TBA-eligible securities on a going-forward basis." Prohibiting the securitization of loans from these cities will raise interest rates and monthly payments on mortgages.
[ii] See 6/11/13 Letter from Representatives Ed Royce, Gary Miller, and John Campbell to Secretary of the Department of Housing and Urban Development Shaun Donovan, at www.tinyurl.com/SIFMAdocuments.
[iii] See 7/12/12 Email from SIFMA Managing Director Richard Dorfman to Acting Director of the Federal Housing Finance Agency Edward DeMarco, at www.tinyurl.com/SIFMAdocuments.

THE WALL STREET JOURNAL.
WSJ.com

OPINION

July 3, 2103

Fighting Foreclosures With Eminent Domain

A way for cities to rescue underwater mortgages from the banks.

By BRAD MILLER

The fight over using eminent domain to prevent foreclosures is on again. Wall Street banks crushed an effort earlier this year by California's San Bernardino County supervisors—in a community devastated by foreclosures and collapsing home values—with threats of ruinously expensive litigation and a lending boycott.

Despite the bullying, the anti-foreclosure idea has been explored by a number of cities, including North Las Vegas and El Monte, a suburb of Los Angeles. The tactic is simple: Municipalities buy mortgages that are likely to end up in foreclosure and negotiate new mortgages that homeowners can afford.

Critics try hard to make this familiar government power sound frighteningly strange and extreme. It is not. Cities invoke the right of eminent domain—or compulsory purchase—every day in every corner of the country.

When cities need to buy property, they usually negotiate a price with the owner like any other buyer. Sometimes the property owner is unwilling to sell. Eminent domain allows cities to take property for a public purpose—while paying fair market value—so a single owner cannot block an important project or gouge taxpayers by holding out for more money.

Eminent domain is how we build relatively straight roads, extend water and sewer lines to new homes, and locate schools near neighborhoods in which children live. The property involved is usually land, but courts have allowed authorities to invoke the right of eminent domain for all kinds of property, including contract rights, trade secrets, insurance policies, stock—and yes, mortgages.

Eminent domain can address the housing crisis. Sensible reductions of homeowner debt can provide relief from a community's foreclosure crisis, but it can make great economic sense for creditors too. Foreclosures are hideously expensive. Creditors usually come out ahead when they reduce a homeowner's debt to an amount the homeowner can pay. When creditors act on their own behalf, they often do just that.

The problem with mortgages is that during the housing bubble banks bundled mortgages and sold securities backed by the loans. The banks do not own those "securitized" mortgages, but manage, or "service," the mortgages for investors in mortgage-backed securities. With no "skin the game," banks skimp on the unglamorous back-office operation required to service securitized mortgages.

Banks bristle at the suggestion that they are inept, but other explanations are more damning. It takes more work to negotiate a sensible modification of a distressed mortgage than to foreclose, but banks can make more money by foreclosing than by modifying, as a 2011 Washington Law Review article by Diane E. Thompson noted.

Banks deny that this "perverse incentive" affects how they service mortgages. On June 7, however, six former Bank of America BAC -0.23%employees filed sworn statements in a class-action lawsuit by homeowners who claim the bank mishandled their mortgages.

The employees allege that the bank denied mortgage modifications to qualified homeowners, falsely claimed not to have received necessary paperwork, falsified electronic records, ignored properly completed applications, denied applications en masse because the paperwork was no longer current, and gave employees bonuses for pushing homeowners who qualified for modifications into foreclosure instead. They claim that the bank pushed for foreclosure instead of modification because foreclosures were more profitable.

Bank of America denies the charges. Yet if the allegations are true, the bank did unconscionable harm to homeowners, their neighbors, and investors in mortgage-backed securities for the sake of a modest additional profit.

The Home Affordable Modification Program has depended on banks to help deal with the housing crisis. But this program, like others, has yielded disappointing results. Recovery from the foreclosure crisis remains painfully slow. Eminent domain, however, can assure that troubled mortgages get the "high touch" servicing needed to avoid foreclosure.

Opponents, such as the American Securitization Forum, argue that the proposed formula for deciding how much cities would pay for mortgages would cheat investors. Yet if investors and cities do not agree on a price, investors could contest the price in court and present evidence of their own formula for valuing mortgages.

Critics also argue that the real motive for the idea is not to help struggling homeowners and communities, but to let slick businessmen make a profit. If a city takes the houses through eminent domain, they say the city will probably hire a company to run the program and make a profit doing so.

This is not much of a criticism. Paving contractors profit when cities use eminent domain to build roads, but cities still build roads. There is no good reason not to try using eminent domain to help homeowners in distress—to save neighborhoods from the blight of vacant, foreclosed homes and to break the cycle of foreclosures and declining home values.

Mr. Miller is a former member of Congress, a senior fellow at the Center for American Progress, and of counsel to the law firm of Grais & Ellsworth LLP.

Los Angeles Times

Seize the mortgages, save the neighborhood

Local governments are looking at the power of eminent domain to take on the mortgage crisis in their communities.

By Robert Kuttner

June 29, 2013

America's failure to solve the continuing mortgage crisis is the most serious lapse in the aftermath of the 2008 subprime meltdown. Several decades of increased homeownership rates in working-class and minority communities have been wiped out. Most homeowners who lost equity, or their homes, were not speculators but innocent bystanders caught in the downdraft of the housing prices that followed.

The Obama administration's mortgage relief program has helped only about 10% of the more than 13 million households still at risk of foreclosure because of "underwater" mortgages — those worth more than the value of the homes. The program did not target those most in need, and it can't reach mortgages turned into securities by private Wall Street firms.

In the hardest-hit communities, the apparent firming of housing prices is mainly the result of speculators buying up vacant houses, not ordinary buyers coming back in. The missing ingredient in this dismal story is reduction of the principal owed on loans, so that people with underwater mortgages can stay in their homes.

Now, however, a more drastic approach is gaining support. Local governments could use eminent domain to take mortgage-backed securities (instead of land), pay their owners fair market value and turn the securities back into whole mortgages. For example, if a security backed by mortgages likely to default is trading at 40% of its face value, eminent domain could reduce the mortgage debt by 60%.

Richmond, Calif., where Mayor Gayle McLaughlin is a strong supporter, is on the verge of giving eminent domain a try. Nearly half of the city's homes have mortgages worth more than the houses. Local governments in El Monte and La Puente are also exploring the idea, as are Seattle, North Las Vegas and Newark, N.J.

Eminent domain more typically is used to destroy neighborhoods for new development. In this case, it could instead save neighborhoods. If eminent domain became a general strategy, it could spare an estimated 3 million to 4 million families the loss of their homes.

The new interest in eminent domain follows some false starts. Last year, a private group called Mortgage Resolution Partners pitched its concept to several cities. MRP's investors would provide the upfront money and legal backing for eminent domain takings, in exchange for a hefty profit.

The plan progressed the furthest in San Bernardino County, where about 168,000 homes, 43% of the total, were underwater. But local officials got cold feet, as the securities industry threatened endless litigation.

There was also criticism that MRP was proposing to convert only mortgages held by homeowners current on their payments, leaving vast swaths of neighborhoods to remain vacant and blighted.

What gave the strategy new life was the direct involvement of community groups and union locals. The Alliance of Californians for Community Empowerment, or ACCE, and the national coalition of faith-based groups known as PICO, or People Improving Communities through Organizing, concluded that eminent domain could work if it protected neighborhoods and didn't give middlemen too big a cut. Locals of the Service Employees International Union, reeling from the impact of foreclosures on its members, local tax revenues and public services, also enlisted local officials.

MRP is now working with several municipalities, including Richmond, and has signed the community groups' statement of principles. According to ACCE campaign director Amy Schur, "The involvement of the community groups and unions assures that the deals aren't just between investors and city hall, and produces the broad political support needed to counter the bankers."

The large investment banks that trade securities have continued to issue threats, hoping to dissuade mayors and investors. Their trade association, SIFMA, contends that this use of eminent domain is unconstitutional and has threatened that cities considering it could pay more to sell their bonds. In fact, the Supreme Court has repeatedly upheld broad use of eminent domain, most recently in the 2005 Kelo decision.

It may seem odd that the federal government is so disengaged from fixing the foreclosure crisis that community groups are turning to friendly private investors. But there are many ways Washington could help.

Once private-label securities are converted back into whole mortgage loans, the Federal Housing Administration would need to insure them. Leftover money from the federal Troubled Asset Relief Program could perhaps help capitalize a broader eminent domain program. The Federal Reserve, which purchases distressed securities, could buy new securities that back loans with reduced principal.

It took the worst kind of creativity of the private and public sectors to produce this mess. Now, we need the ingenuity of community and labor groups working with public-minded officials and investors to solve it.

Robert Kuttner, author of the just published "Debtors' Prison: The Politics of Austerity Versus Possibility," is co-editor of the American Prospect and a senior fellow at Demos.