



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-1000

ASSISTANT SECRETARY FOR CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

AUG 12 2013

The Honorable Ed Royce
U.S. House of Representatives
Washington, DC 20515

The Honorable Gary G. Miller
U.S. House of Representatives
Washington, DC 20515

The Honorable John Campbell
U.S. House of Representatives
Washington, DC 20515

Dear Representatives Royce, Miller and Campbell:

I am writing in response to your letter to Department of Housing and Urban Development (HUD) Secretary Shaun Donovan of June 11, 2013, regarding the potential use of eminent domain to refinance underwater mortgages, which is currently being considered by a number of municipalities around the country. HUD shares your goals of ensuring the continued recovery of the housing market, as well as your concerns about events that could harm the recovery and the growth of private capital in the mortgage market.

As Deputy Assistant Secretary for Single Family Housing Charles Coulter testified during the hearing on May 16, 2013 before the Subcommittee on Housing and Insurance of the House Financial Services Committee. HUD is concerned about the developments you cite in your letter. At the same time, HUD recognizes that eminent domain is an inherent and often indispensable tool for local governments to accomplish important public purposes. Notions of using eminent domain to condemn and refinance mortgages, however, raise a number of potential and novel issues that state and local governments and the courts will have to consider and resolve. Municipalities would have to decide whether pursuing such a policy best serves their residents. They would also have to develop and execute a condemnation and compensation plan that will survive legal scrutiny under both federal and state laws and legal precedent, as well as political scrutiny from their citizens and other stakeholders.

While some municipalities have approved such an idea in theory and have taken preliminary steps to pursue it, others have already rejected it. For instance, the municipal governments of San Bernardino, California; Salinas, California; and Brockton, Massachusetts, among others, have all considered and ultimately rejected such proposals. However, on July 31, 2013, Richmond, California took the step of mailing letters to a number of trustees and servicers with offers for both performing and non-performing securitized mortgages. The letter set a response deadline of August 13, 2013. At least three of the recipients, all trustees for some of the trusts holding some of the identified mortgage loans, responded on August 7, 2013, by filing two court complaints seeking preliminary injunctive relief.

HUD recognizes the serious concerns raised by these legal actions against Richmond, California and the private entities working with the city. Pending legal developments and possible further execution of the plans in question, HUD does not know whether any new mortgage which might be created would qualify for insurance by the Federal Housing Administration (FHA). Moreover, until such plans produce concrete, analyzable results, HUD will not know what if any effects they will have on FHA and the mortgage market. Any guidance from FHA on this issue should take into account these factors and should be narrowly tailored to avoid any unintended consequences. Therefore, we believe it is most prudent to consider what if any programmatic response from FHA is appropriate when more information about such possible use of eminent domain becomes available.

HUD shares the concerns raised in your letter and is continuing to monitor closely events on this issue as they unfold among state and local governments. If necessary, HUD will issue informational guidance to FHA approved lending institutions as appropriate. Thank you for your interest in HUD's programs, and we look forward to our continued work together to further strengthen the housing recovery.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliot M. Minberg". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Elliot M. Minberg
Acting Assistant Secretary for Congressional
and Intergovernmental Relations