



703 Market St., Suite 2000
San Francisco, CA 94103
Telephone: 415-546-7000
Fax: 415-546-7007
nhlp@nhlp.org
www.nhlp.org

**FINAL REPORT TO
The Barbara McDowell and Gerald S. Hartman Foundation
September 2013**

Initiative: Litigating for Rural Homeowners to Challenge USDA
Collection Practices

Grantee: National Housing Law Project (NHLP)

The National Housing Law Project is pleased to provide the following report on our activities funded by the Barbara McDowell and Gerald S. Hartman Foundation. NHLP'S award of \$10,500 has supported our litigation and administrative advocacy to benefit low-income rural homeowners who have lost their homes to foreclosure and are nonetheless subject to harsh collection practices by the United States Department of Agriculture that aim to recoup home loan funds post-foreclosure.

NHLP's Activities and Accomplishments under the Grant

For the past year, the National Housing Law Project has received assistance from the Barbara McDowell and Gerald S. Hartman Foundation to challenge practices, used by USDA's Rural Development (RD) division, which attempt to recover bottom-line loan deficiencies on USDA direct and guaranteed home loans. In the mid-2000s, RD, relying on the Debt Collection Improvement Act of 1996 (DCIA), began to collect deficiencies from borrowers who defaulted on their home loans regardless of the reason for the default, the size of the debt, or the borrower's capacity to repay. Relying on DCIA authority, USDA used, and continues to use, administrative wage garnishment and tax refund offsets to collect borrowers' deficiencies. The procedure authorizes the federal government to garnish up to 15% of a debtor's wages or federal income, such as social security, or to fully capture tax refunds, which in some cases can amount to several thousand dollars a year. The USDA is targeting very low and moderate income single-family home loan borrowers who have defaulted on their loans in these collection efforts. Some of these targeted borrowers have already lost their homes but the foreclosure sales failed to recover the full loan amount outstanding. Accordingly, USDA's borrowers are unique in that these former homeowners are pursued to settle loan balances after foreclosure and after surrendering the asset in question.

Prior to filing litigation to stop these collection practices, NHLP staff met with the RD's Deputy Undersecretary and the Administrator of the RD Housing Section in Washington D.C. in an effort to secure the agency's agreement to voluntarily stop these collection practices. NHLP formally

submitted a request co-signed by 28 other organizations to the USDA Secretary, Tom Vilsack, to stop the debt collection practices.

While the USDA's initial response to our requests was positive, the agency declined to give us a definitive response over the next seven months, during which time NHLP had two more meetings and several phone calls with USDA staff. Finally, in February of 2013, we were advised orally by USDA that, with several limited exceptions that the agency staff did not define, it would cease to initiate any new collections from both direct and guaranteed loan borrowers. It also advised us that the agency had eliminated a provision in its guaranteed borrowers' Request for a Loan Guarantee, by which guaranteed borrowers agreed to indemnify the agency for any losses that it incurred as a result of the borrower's default. At the same time, unfortunately, the agency also advised us that it would not cease collections already underway because, the agency claims, those collections were no longer under its control as they had been turned over to the Department of the Treasury.

NHLP was pleased but not satisfied by the USDA response. We publicized the USDA decision by publishing an article in our *Housing Law Bulletin*, by alerting the *Wall Street Journal*, and by issuing a press release to other newspapers. The *Wall Street Journal*, which alerted by NHLP, had earlier cast the first public spotlight on the USDA collection practices in a lengthy feature article, followed up with USDA officials and independently confirmed the change in agency practice. A copy of our *Housing Law Bulletin* article and that of the *Wall Street Journal* are enclosed.

Since USDA announced the change in its collection practices, NHLP has requested USDA to provide it with written confirmation of the exact circumstances under which USDA has reserved a limited right to continue its debt collection practices and to explain why it is unable to stop collections that have been referred to the Treasury Department. In our efforts to secure the information, we asked for and received assistance from Senator Franken of Minnesota and Congressman Hinojosa of Texas. To date, our collective efforts have been unsuccessful. Information we have received confidentially from agency staff who are not involved in the decision-making process is that USDA has implemented the changes in its collection efforts without any precise or written directions because the agency is concerned about adverse reaction from Congress to its policy change since it adversely affects the agency's budget.¹

Following months of negotiations and requests for further information, USDA has failed to fully cease its collection practices, failed to specify the circumstances under which it will continue some collections, and failed to incorporate its policy in any written agency directives.² Consequently,

¹ NHLP has been advised by USDA that it was collecting approximately \$35 million each year from borrowers. The Wall Street Journal reported last year that the agency was collecting \$40 million each year. NHLP believes that both amounts are high, but that the figure is in the millions of dollars.

² At NHLP's urging, Congressman Hinojosa requested that USDA advise him of its collection practices earlier in the year. On August 27, we finally received a copy of the RHS response, which makes it clear that they have modified their agreements with guaranteed borrowers by eliminating the provision that obligated them to indemnify the agency in the event of a loan loss. This means that future guaranteed borrowers will not be subject to collections. However, with respect to existing guaranteed and direct loan borrowers, the agency has retained the right to pursue collections if it determines that the former borrower has more than minimal

NHLP has decided that litigation is the only way to put an end to the remaining USDA debt collection practices and to recover the millions of dollars that have been already collected from low and very low-income households.

During the past 16 months that NHLP has been working on this issue, we have been contacted by several affected clients and their attorneys. We are now prepared to commence litigation against USDA to enjoin these remaining practices. The litigation will be brought against the Secretaries of Agriculture and Treasury and filed in a Federal District Court, most likely in the District of Columbia. In all likelihood, the litigation will be a class action, and if the class is successful in securing certification, the plaintiff class will represent several thousand USDA-financed homeowners that could potentially recover in excess of \$20 million. We are seeking continued support from the the Barbara McDowell and Gerald S. Hartman Foundation to sustain this litigation and bring these efforts to a satisfactory conclusion.

It is expected that the case will take about one year to resolve at the district court level. If either the plaintiff or USDA appeals the decision, it is expected that at least another year would be added to this timeframe.

Please also see the enclosed attachments from the *Wall Street Journal*, reporting on the USDA's decision to reform its collection practices and from NHLP's July 2013 *Housing Law Bulletin*, which also reported our progress on this issue.

NHLP extends its sincere thanks to the Foundation for supporting our efforts to overhaul the USDA's harsh collection practices and to bring much-needed relief to rural families who have lost homes and already suffered greatly in the foreclosure crisis.

assets that would allow the debt repayment. Moreover, the agency claims that it has no authority to cease collection practices that have already been initiated.