

RHS Releases Data on Guaranteed Home Loan Program

In response to a Freedom of Information Act request submitted by the National Housing Law Project (NHLP), the Rural Housing Service (RHS) recently released data on the financial institutions that are participating in its guaranteed home loan program. The data show that JPMorgan Chase Bank is by far the largest program participant, holding over 246,000 loans as of February 28, 2011, the date of the RHS report. Bank of America is the next biggest lender, holding only 55,144 loans. Only two other lenders, Wells Fargo Bank and US Bank, hold more than 10,000 loans, with Wells Fargo holding 28,439 loans and US Bank holding 14,220 loans. Thirty-three additional lenders hold over 1,000 loans each, 144 lenders hold between 100 and 999 loans, 616 lenders hold between 11 and 99 loans, while 1,104 lenders hold 10 or fewer loans.

Background

Since 1990, RHS has administered the Guaranteed Single Family Homeownership Loan Program pursuant to Section 502(h) of the Housing Act of 1949.¹ The program started slowly, reaching 30,000 loans per year by 1997. Since 2007, the program has grown substantially. In 2008, the agency made about 59,000 loans, while in 2009 the number of loans more than doubled to 133,045. This dramatic increase was due to the fact that the program's loan authorization was set at \$12 billion in fiscal year (FY) 2009, and Congress made an additional \$12 billion available under the American Recovery and Reinvestment Act.² For FY 2011, the program was again funded at \$24 billion, and it appears that the program will continue to be funded at that level because, excluding personnel costs, the program effectively runs without cost to the federal government. This is due to the fact that borrowers are charged an up-front participation fee which offsets program costs. It is estimated that by the beginning of 2011, over 700,000 Section 502 guaranteed loans will have been made since 1990.

Data Analysis

While the program has over 800 participating lenders, it is being dominated by JPMorgan Chase, which holds approximately 35% of all loans originated. Together with Bank of America, Wells Fargo and US Bank, the four top banks hold nearly 50% of the loans made under the program.

¹42 U.S.C. § 1472(h).

²Pub. L. No. 111-5 (Feb. 17, 2009).

The program's dominance by four large national financial institutions raises serious questions about whether the program should remain at RHS or, at the very least, be consolidated in the Rural Development (RD) Financial and Servicing Office that is based in St. Louis, Missouri. Currently, guaranteed loan applications are taken and processed by private banks, but approval is required from Rural Development field staff located in the areas where the loans are made. Complaints abound about Rural Development field staff being inundated and overworked with the guaranteed loan approval process, which requires RD staff to approve loans within 48 hours.³ The heavy guaranteed case load is precluding RD field staff from reviewing and approving RHS direct home loans and other loans and grants serving low- and very low-income households. Since the guaranteed loan approval process does not require any personal contact with potential borrowers, there is no reason why the approval process cannot be handled in the RD Financial Servicing Office. Ideally, the program should be transferred to HUD, which already insures single family home loans under the Section 203 loan program.

State Housing Finance Agency Participation

Interestingly, a number of state housing finance agencies hold RD guaranteed loans. The South Dakota Housing Development Authority has the most, with 5,710. It is followed closely by the Kentucky Housing Finance Agency, which holds 5,090. Other state housing finance agencies that participate in the program are the Pennsylvania Housing Finance Agency (3,210), the Minnesota Housing Finance Agency (3,126), Maine Housing (2,659), Idaho Housing Agency (1,737), Virginia Housing Development Authority (1,727), West Virginia Housing Development Fund (1,492), North Dakota Housing Finance Agency (1,482), Montana Board of Housing (1,400), and Michigan State Housing Development Authority (1,073). At least six other finance agencies are in the program, each holding fewer than 1,000 loans.

Guaranteed Lender Participation in the RHS-HAMP Program

In August of 2010, RHS published regulations giving guaranteed lenders discretion to participate in prescribed loan modification options.⁴ The regulations were deemed by the Department of Treasury to constitute RHS participation in the Home Affordable Modification Program (HAMP). As a result, the Department of Treasury offered financial incentives to guaranteed lenders who amended their Servicer Participation Agreement and modified RHS

borrowers' loans.⁵ Only 10 guaranteed lenders modified their agreements with the Department of the Treasury. Fortunately, those lenders include JPMorgan Chase, Bank of America, and Wells Fargo Bank. The lenders do not include US Bank, Freddie Mac, Fannie Mae, or any of the state housing finance agencies participating in the program.⁶

Challenging Foreclosures on RHS Guaranteed Loans

Advocates who represent or counsel rural borrowers in foreclosure matters are urged to review whether the client has an RHS guaranteed loan. This can be determined only by asking the lender or reviewing the borrower's closing documents. Neither the promissory note nor the mortgage/deed of trust discloses whether the loan is RHS guaranteed. The two documents that should show whether the loan is guaranteed are the Settlement Statement (HUD 1), which should have the RD guaranteed loan box checked or show a settlement charge titled RD Fee, and the Notification to Applicant on Use of Financial Information from Financial Institutions (RD Form 410-7).

⁵See HAMP Supplemental Directive 10-10 (Sept. 17, 2010), https://www.hmpadmin.com/portal/programs/docs/rd_hamp/sd1010.pdf.

⁶FOIA Response by Mark Vugrinovich, Department of Treasury to NHLP (Jan. 12, 2010).

Top Fifteen RHS Guaranteed Lenders		
Lender	No. of Loans	Modified Treasury HAMP Agreement?
JPMorgan Chase Bank	246,678	Yes
Bank of America	55,144	Yes
Wells Fargo	28,439	Yes
U.S. Bank Home Mortgage	14,220	No
Freddie Mac Bank One	9,236	No
Banco Popular de Puerto Rico	6,716	Yes
South Dakota Housing Dev. Auth.	5,710	No
PNC Mortgage	5,148	No
Kentucky Housing Corp.	5,090	No
Flagstar Bank	4,515	No
Metlife Bank	4,372	No
Regions Bank	3,397	No
Pennsylvania Housing Finance Agency	3,210	No
Minnesota Housing Finance Agency	3,126	No
Fannie Mae	2,990	No

³7 C.F.R. § 1980.354 (2011).

⁴75 Fed. Reg. 52,429 (Aug. 26, 2010).

If the client has an RHS guaranteed loan and the default was for reasons beyond the client's control, advocates are urged to consider filing affirmative litigation against RHS for its failure to implement various loan servicing options that it is required to undertake under the Housing Act of 1949.⁷ These include providing borrowers with a moratorium on payments, requiring lenders to engage in loss mitigation, having lenders assign the loan to RHS, refinancing the RHS loan with a direct RHS Section 502 loan and refinancing the loan with another guaranteed loan. Borrowers facing foreclosure also have statutory due process rights that RHS is ignoring. Several cases raising these issues are currently pending in federal courts.⁸

If the borrower's loan is held by a state housing finance agency, advocates also should consider bringing a state due process claim against the finance agency.

For more information about challenging RHS-guaranteed loan foreclosures, contact Gideon Anders at NHLP (ganders@nhlp.org). ■

⁷42 U.S.C. § 1471 *et seq.*

⁸*See, e.g., Tone v. Vilsack*, No. 10cv891 (S.D. Ohio first amended complaint filed Feb. 10, 2011). *See also* NHLP, *Rural Housing Service Borrower Obtains Order Temporarily Enjoining Foreclosure*, 41 HOUS. L. BULL. 97, 102 (May 2011).