June 12, 2012

The Honorable Tom Vilsack
United States Department of Agriculture
Washington, DC 20250

Dear Secretary Vilsack:

The undersigned individuals and organizations, who work with and represent low-income homeowners participating in the Rural Housing Service's Section 502 direct or guaranteed home loan programs, request that you immediately halt the agency's practice of administratively collecting debt balances on direct loans and loss payments on guaranteed loans from borrowers who have defaulted on their loans. We strongly believe that this practice is contrary to the mission and goals of both the direct and guaranteed loan programs, that it is being carried out in violation of the law, and that it creates an extreme hardship to low- and moderate-income former borrowers whose salaries are being garnished and whose federal benefits are being offset.

As you know, the direct and guaranteed home loan programs were enacted to assist very low-, low-, and moderate-income households in becoming successful homeowners. Loans under the programs are made at 100% of the value of the home in recognition of the fact that participating households are unable to secure commercial home loans and do not have sufficient assets to make even a modest down payment. Certainly, you are aware that in the last four years, many borrowers have defaulted on their loans for reasons beyond their control, namely, loss of income and employment brought about by the ongoing recession. Moreover, these borrowers' losses and debts have increased dramatically due to the severe decrease in property values since 2008.

Given the dire economic and real estate hardships that many RHS borrowers have experienced, it is very troubling that USDA pursues current and former borrowers and seeks to collect debts and losses administratively through the Department of Treasury's TOPS and Cross Servicing programs. These collection actions are contrary to the President's repeated statements that this Administration is intent on assisting borrowers who have defaulted on their loans due to the economic and real estate crisis that this country is experiencing. They are also contrary to the Department of Housing and Urban Development's practice of not seeking to collect any losses from borrowers who have defaulted on their Federal Housing Administration insured loans.

Our review of USDA hearing decisions discloses that the agency pursues: borrowers whose defaults are clearly for reasons that are beyond their control; borrowers who have received moratorium relief, statutorily intended to protect them against deficiency judgments; borrowers who have been approved by the agency or lenders to undertake short sales; borrowers for whom these collections are an extreme hardship; and borrowers whose income is so low that they will never be able to repay the agency. In short, RHS' practice of debt collection from low-income and low-asset borrowers who sought to become successful homeowners is simply inconsistent with the agency's social goal of increasing homeownership among low- and moderate-income households.

Moreover, we believe that the manner in which RHS is pursuing these debts and losses, purportedly under the Debt Collection Improvement Act of 1996 (DCIA), is contrary to that act. Specifically, the DCIA requires an appropriate official of the Federal Government to determine that a debt or a loss is actually owed to the United States by a person and that it collectible under

the DCIA.[1] USDA has on several occasions made such a determination with respect to other programs and has published those determinations in the Federal Register. No such determination has been made with respect to the direct or guaranteed home loan programs operated by RHS.

Our review of administrative appeal decisions also discloses that RHS is not enforcing the DCIA when it seeks to collect losses from guaranteed loan borrowers. Instead, it is collecting these funds under an indemnification agreement that was inserted into the RHS Request for a Loan Guarantee that borrowers are required to execute at the guaranteed loan closing. RHS has never published any notice of its intent to insert this indemnification agreement into the Request for a Loan Guarantee and we do not believe that it has authority to do so under the DCIA. In other words, the indemnification agreement violates the law both substantively and procedurally.

We find it particularly disquieting that the indemnification agreement is not referenced in RHS regulations governing the guaranteed loan program nor are lenders required to disclose it to borrowers when they close their loans. This failure to provide critical consumer information is exacerbated by the fact that the agreement is not written in plain English and is not translated into other languages for the significant number of RHS borrowers who do not speak English fluently.

We fail to understand why the agency is continuing this collection practice, instituted by a previous administration, when it appears fiscally unnecessary since RHS guaranteed borrowers pay for the RHS guarantee at the time of loan closing and the agency has recently made the program self-sufficient by increasing the upfront guarantee fee and by collecting an annual mortgage insurance premium.

RHS' aggressive collection practices are particularly egregious in comparison to its failure to affirmatively implement mechanisms that enable direct or guaranteed borrowers to avoid foreclosure. For example, more than three years after its enactment, RHS has yet to implement several new provisions designed to assist guarantee borrowers retain their homes contained in the Save Our Homes From Foreclosure Act of 2009.

The Department of Agriculture's practice of collecting debts and losses from defaulting borrowers has truly turned the American dream of homeownership into a nightmare. We, therefore, request that you direct RHS to immediately cease the practice.

Sincerely yours,

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[1] 31 U.S.C. § 3701(b)(1).

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