United States – Agricultural Finance – The Farmers Home Administration Has a Statutory Duty to Inform Borrowers of Loan Deferral Procedures Pursuant to 7 U.S.C. § 1981A and to Provide Borrowers with Notice and an Opportunity to be Heard Before Terminating Income for Necessary Living and Operating Expenses

by

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UNITED STATES — AGRICULTURAL FINANCE — THE FARMERS HOME ADMINISTRATION HAS A STATUTORY DUTY TO INFORM BORROWERS OF LOAN DEFERRAL PROCEDURES PURSUANT TO 7 U.S.C. § 1981A AND TO PROVIDE BORROWERS WITH NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE TERMINATING INCOME FOR NECESSARY LIVING AND OPERATING EXPENSES

I. INTRODUCTION

Plaintiffs were North Dakota family farmers who had received loans from the Farmers Home Administration (FmHA).[1] Due to circumstances beyond their control, these farmers were temporarily unable to repay their loans.[2] Plaintiffs sought class action status in order to represent all North Dakota family farmers who then held or would hold farm program loans from the FmHA.[3] The borrowers alleged hat officials of FmHA had violated constitutional,[4] statutory, and regulatory requirements.[5] Plaintiffs

1. Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983). The Farmers Home Administration (FmHA) is the principal lending institution through which the United States Government provides credit to small family farmers. *See* 7 C.F.R. § 1941.1-.4 (1984). In order to qualify for credit, the applicant must certify in writing that he cannot obtain adequate credit elsewhere to finance his needs at reasonable rates and terms, taking into consideration the terms and rates of private and cooperative sources. 7 C.F.R. § 1941.6 (1984). *See also* 7 C.F.R. § 1941.12(a) (7) (1984) (to be eligible for an operating loan, an individual must be unable to obtain sufficient credit elsewhere).

2. Brief for Plaintiff at 1, Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983).

3. 562 F. Supp. at 1354-55. Plaintiffs argued that class action status was necessary to avoid denying individual farmers and ranchers the benefit of notice and an opportunity for a hearing. *Id.* at 1357. If the court granted class action status FmHA's policies would affect all holders of FmHA farm program loans within the State of North Dakota. *Id.* at 1356.

4. *Id.* at 1355. Plaintiffs alleged that FmHA was acting in part as a welfare agency and therefore participation in the farmers loan program was a governmental benefit in which the plaintiffs had a legitimate property interest. *Id.* at 1364. Plaintiffs argued that termination of a borrower's loan program, without a pre-termination hearing, constituted a deprivation of property without adequate due process. *Id.* at 1365.

The fifth amendment of the United States Constitution provides that: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. V.

5. 562 F. Supp. at 1355. The plaintiffs argued that FmHA had a mandatory duty to promulgate

alleged *inter alia* that FmHA had refused to allow the farmers' applications for deferment of loans under section 1981a of title 7 of the United States Code (U.S.C.),[6] had terminated funds to farmers for necessary living and operating expenses, and had subjected farmers to a biased and unconstitutional appeals process.[7] The United States District Court for the State of North Dakota granted a preliminary injunction and *held* that FmHA had a statutory duty to inform borrowers of the availability of loan deferrals, and that FmHA must give farmers notice and an opportunity to be heard before terminating income for necessary living and operating expenses.[8] *Coleman v. Block,* 562 F. Supp. 1353 (D.N.D. 1983).

Six months later the court expanded the statewide class to a national class.[9] The preliminary injunction then applied with respect to all FmHA borrowers except for borrowers residing in states where borrowers had requested, or a court had certified, a statewide class on similar legal issues.[10]

Approximately three months after national class certification, the court adopted by reference its reasoning and conclusions contained in the order granting a preliminary injunction and ordered a permanent injunction, applicable to the national class.[11] FmHA appealed this decision and the plaintiff

regulations implementing 7 U.S.C. § 1981a (1982), and that FmHA's failure to do so violated statutory and regulatory requirements. *Id.* at 1360.

6. *Id.* at 1355. Section 1981a of title 7 of the United States Code states as follows:

> In addition to any other authority that the Secretary may have to defer principal and interest and forego foreclosure, the Secretary may permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured, or held by the Secretary under this chapter, or under the provisions of any other law administered by the Farmers Home Administration, and may forego foreclosure of any such loan, for such period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower. The Secretary may permit interest that accrues during the deferral period on any loan deferred under this section to bear no interest during or after such period: *Provided,* that if the security instrument securing such loan is foreclosed such interest as is included in the purchase price at such foreclosure shall become part of the principal and draw interest from the date of foreclosure at the rate prescribed by law.

7 U.S.C. § 1981a (1982).

7. *Coleman,* 562 F. Supp. at 1355. Plaintiffs alleged that using the state director of FmHA or other district directors as hearing officers subjected the farmers to a biased and unconstitutional appeals process. *Id.* at 1366.

8. *Id.* at 1367-68.

9. Coleman v. Block, 580 F. Supp. 192 (D.N.D. 1983). The court found that the rationale it had applied to grant a statewide preliminary injunction was equally applicable to the national class. *Id.* at 193. Following a hearing on a motion by the plaintiffs to expand the class, the court granted the plaintiffs permission to amend the complaint to include persons similarly situated throughout the United States. *Id.* at 192-93.

10. *Id.* at 192-93. The court excluded from the national class borrowers who had filed actions that directly related to "the implementation of 7 U.S.C. § 1981a, the constitutionality of a pre-hearing cut-off of necessary family living and farm operating expenses, and the constitutionality of the Farmers Home Administration appeals procedures." *Id.*

11. Coleman v. Block, 580 F. Supp. 194, 210 (D.N.D. 1984). In determining whether the

borrowers cross-appealed.

The purpose of this Article is to discuss the history of federal agricultural lending, analyze the court's decision to grant a preliminary injunction, and discuss the court's decision to make the injunction permanent.

II. HISTORY OF GOVERNMENTAL FARM LOAN PROGRAMS

The federal government has extended agricultural credit to farmers for over 120 years, beginning with the Homestead Act of 1862.[12] This Act provided small-scale family farmers with opportunities to farm.[13] The first direct government lending began in 1918 with an appropriation from Congress for crop and seed loans to farmers suffering natural disasters.[14] When President Roosevelt established the Farm Credit Administration[15] in 1933, Congress placed the crop and seed loan office under the Administration's general supervision.[16]

The Emergency Relief Act,[17] passed in 1933, provided distressed farm families with loans designed to help them continue their operations and reduce relief roles.[18] While the federal government has provided credit to farmers for more than 120 years, FmHA traces its origin to legislation enacted during the Depression of the 1930's. The Resettlement Administration, created by executive order in 1935, was the earliest predecessor to FmHA.[19] This Agency made loans to farmers settling in rural areas and provided supervision for farm operators.[20]

In 1937 Congress passed the Bankhead-Jones Farm Tenant Act,[21] which authorized loans to farm tenants for the purchase of

injunction should be permanent, the court applied a three-part test. *Id.* at 209. For a discussion of the reasoning and conclusions adopted by the court in granting a permanent injunction, see *infra* notes 110-68 and accompanying text.

12. Curry v. Block, 541 F. Supp. 506, 509 (S.D. Ga. 1982) (citing the Homestead Act, ch. 75, 12 Stat. 392, 392-93 (1862)).

13. *Curry*, 541 F. Supp. at 509.

14. Brake, *A Perspective on Federal Involvement in Agricultural Credit Programs*, 19 S.D.L. REV. 567, 580 (1974).

15. Exec. Order No. 6084 (1933).

16. Brake, *supra* note 14, at 580.

17. Federal Emergency Relief Act, ch. 30, 48 Stat. 55 (1933).

18. Brake, *supra* note 14, at 580-81. *See* Federal Emergency Relief Act, ch. 30, 48 Stat. 55 (1933).

19. Exec. Order No. 7027 (1933).

20. *Id.*

21. Bankhead-Jones Farm Tenant Act, ch. 517, 50 Stat. 522 (1937) (codified as amended at 7 U.S.C. §§ 1010-1012 (1982)).

farms.[22] The Bankhead-Jones Act created the Farm Security Administration in 1938, which succeeded the Resettlement Administration.[23] The purpose of the Farm Security Administration was to provide supervised, long-term loans to farmers who could not obtain credit from other sources.[24]

In 1946 Congress reenacted the Bankhead-Jones Farm Tenant Act of 1937 as part of the Farmers Home Administration Act of 1946.[25] This Act consolidated the Farm Security Administration and all other emergency crop production, feed, seed, drought, and rehabilitation loans that the Farm Credit Administration administered.[26] This Act provided authority to make farm ownership loans, farm operating loans, and emergency loans to farmers unable to obtain credit from conventional sources.[27]

Due to the increase in farming technology and the changes of the credit needs of farmers, Congress passed the Consolidated Farmers Home Administration Act in 1961.[28] This Act consolidated and updated the authority of the Secretary of Agriculture (Secretary) to provide eligible farmers with direct and insured loans needed to acquire, improve, or operate their farms.[29]

Congress amended the Consolidated Farmers Home Administration Act in 1972 and it became known as the Consolidated Farm and Rural Development Act.[30] This Act consolidated the farm loan program and the rural housing loan program.[31]

The purpose of early federal involvement in agricultural credit, as evidenced by the social legislation that evolved during the Depression, was to aid the distressed and low income farmers.[32] This legislation has consistently provided aid to farmers who were unable to obtain credit elsewhere.[33] The Consolidated Farm and

22. *Id.* § 1(b).

23. Brake, *supra* note 14, at 581.

24. *Id.*

25. Farmers Home Administration Act, ch. 964, 60 Stat. 1062 (1946) (codified in scattered sections of 7 U.S.C.).

26. *Id.* § 2, at 1062-63.

27. *Id.* § 44, at 1068-69. *See* Brake, *supra* note 14, at 582.

28. Curry v. Block, 541 F. Supp. 506, 510 (S.D. Ga. 1982) (construing the Agricultural Act of 1961, Pub. L. No. 87-128, tit. 3, 75 Stat. 294, 307) (codified as amended in scattered sections of 7 U.S.C.).

29. S. Rep. No. 566, 87th Cong., 1st Sess. ____, *reprinted in* 1961 U.S. CODE CONG. & AD. NEWS 2243, 2305.

30. Rural Development Act of 1972, Pub. L. No. 92-419, 86 Stat. 657 (codified as amended in scattered sections of 7 U.S.C.).

31. *Id.* Congress established the rural housing loan program to extend credit to farm owners to improve their rural dwellings. Housing Act of 1949, ch. 338, 63 Stat. 413 (codified in scattered sections of 42 U.S.C.).

32. *Curry*, 541 F. Supp. at 511. Federal intervention in agricultural credit shows a history of farm loan programs designed to aid the farmer who cannot obtain financing from another source. *Id.*

33. *Id.*

Rural Development Act of 1972 (CFRDA) is the current authority for providing agricultural credit to eligible farmers.[34]

The CFRDA consists of four subchapters.[35] The first three subchapters contain the substantive provisions of the Act, and the fourth subchapter, which includes section 1981(d) of title 7, contains the Act's administrative provisions.[36] Section 1981(d) grants the Secretary authority for many loan servicing devices that FmHA utilizes.[37]

Section 1981a of title 7, enacted in 1978, grants additional authority to the Secretary to defer principal and interest and to forego foreclosure.[38] Few courts have addressed the issue of whether the Secretary must take action under section 1981a. The majority of jurisdictions that have decided this issue, however, have held that FmHA has a statutory duty to implement the authority granted by section 1981a.[39]

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34. Consolidated Farm and Rural Development Act, Pub. L. No. 92-419, 86 Stat. 657 (1972) [hereinafter cited as CFRDA] (codified as amended in scattered sections of 7 U.S.C.). For a discussion of federal acts providing agricultural credit to farmers prior to the Consolidated Farm and Rural Development Act, see Brake, *supra* note 14, at 580-84.

35. *See* 7 U.S.C. §§ 1921-96 (1982). Subchapter I of the CFRDA authorizes the Secretary of Agriculture (Secretary) to grant or insure real estate loans under the heading of real estate. 7 U.S.C. §§ 1921-34 (1982). Subchapter II authorizes the Secretary to make or insure operating loans. 7 U.S.C. §§ 1941-47 (1982). Subchapter III authorizes the Secretary to make or insure loans when an applicant's "operations have been affected by a natural disaster." 7 U.S.C. §§ 1961-71 (1982).

36. 7 U.S.C. §§ 1981-96 (1982). .

37. 7 U.S.C. § 1981(d) (1982). Section 1981(d) provides that the Secretary may "compromise, adjust, or reduce claims, and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require. . . ." *Id.*

38. 7 U.S.C. § 1981a (1982). Section 1981a grants the Secretary authority to defer principal and interest "[i]n *addition* to any other authority that the Secretary may have to defer principal and interest." *Id.* (emphasis added).

39. *See, e.g.*, Curry v. Block, 541 F. Supp. 506 (S.D. Ga. 1982). The Court in *Curry* held that 7 U.S.C. § 1981a imposed a mandatory duty on FmHA to consider granting deferral relief to eligible recipients of farm loans. *Id.* at 517-18. *See also* United States v. Hamrick, 713 F.2d 69, 71 n.3 (4th Cir. 1983) (recently promulgated regulations require FmHA to give notice to borrowers to enable them to inquire about and apply for deferral relief under section 1981a); Matzke v. Block, 564 F. Supp. 1157, 1166 (D. Kan. 1983) (FmHA has a statutory duty to consider, before exercising its discretionary power to grant a deferral, whether the borrower is temporarily unable to continue making payments due to circumstances beyond the borrower's control and whether the borrower's standard of living will be unduly impaired by having to make such payments when due), *aff'd*, 732 F.2d 799 (10th Cir. 1984); Gamradt v. Block, 581 F. Supp. 122, 129-31 (D. Minn. 1983) (both the language and the legislative history of section 1981a clearly contemplated the implementation of a deferral program and FmHA must give the borrowers notice and an opportunity to obtain deferral relief before FmHA takes any action against plaintiffs or depriving plaintiffs of property); Gates v. Block, No. 83-6025-CV-SJ, slip op. at 2 (W.D. Mo. May 5, 1983) (holding that section 1981a was not discretionary and that FmHA violated its statutory duty under section 1981a by not providing borrowers with notice of deferral provisions and an opportunity for a hearing); Lehnert v. Block, No. 83-2328-M, slip op. at 7, 11 (W.D. Tenn. June 27, 1983) (holding that existing regulations did not adequately implement § 1981a and that FmHA must implement § 1981a by issuing some notification to plaintiffs and granting them an opportunity to request and be considered for deferral relief); Allison v. Block, 556 F. Supp. 400, 403 (W.D. Mo. 1982) (the language of 7 U.S.C. § 1981a was not discretionary; FmHA enjoined from foreclosing on the plaintiffs' farm until FmHA provided plaintiffs with notice and an opportunity to be heard), *aff'd*, 723 F.2d 631, 633 (8th Cir. 1983); *But see* Ramey v. Block, No. 3-82-557, slip op. at 4 (E.D. Tenn. Jan. 20, 1983) (the language of § 1981a was permissive on its face); Neighbors v. Block, 564 F. Supp. 1075, 1077-78 (E.D. Ark. 1983) (plaintiffs' request for a preliminary injunction, based on FmHA's failure to notify or consider plaintiffs for § 1981a deferral relief, was denied because authority granted by § 1981a is permissive;

In *Curry v. Block,* the court conducted an extensive review of the federal government's involvement in agricultural credit.[40] The court examined the legislative history and statutory framework of section 1981a[41] and concluded that it imposed a mandatory duty on FmHA to consider granting deferral relief to eligible applicants.[42]

III. THE PRELIMINARY INJUNCTION — COLEMAN I

In *Coleman v. Block* the court had to decide whether the Secretary should be enjoined from taking any adverse action against FmHA farm loan holders until the FmHA promulgates regulations implementing section 1981a.[43] Before deciding this issue, the court considered procedural objections raised by the defendants concerning exhaustion of remedies, liabilities to suit, and a motion for class certification.[44] The court determined that the plaintiffs had presented facts sufficient to show that they had exhausted other remedies, thereby shifting the burden to the defendants to show the remedies had not been exhausted.[45] FmHA

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the court did state that if a borrower requests that FmHA defer his payment or forego foreclosure and offers to make the showing required by § 1981a, the borrower must be given an opportunity to make the showing; if he succeeds in making the proper showing, FmHA must consider the request in good faith).

40. *Curry,* 541 F. Supp. at 509-14. The court found that the history of federal involvement in agricultural credit indicated that the object of the legislation was to aid the underprivileged farmer who could not obtain credit elsewhere. Therefore, the court concluded that the FmHA farm loan program was a form of social welfare legislation. *Id.* at 511. The court noted that the interpretation of § 1981a should reflect the social welfare goals of Congress, such as its directive to keep existing farms operating. *Id.* at 514 (construing 7 U.S.C. § 1921 (1982)).

41. *Curry,* 541 F. Supp. at 516-24 (examining 7 U.S.C. § 1981a (1982)). The court stated that the existence of the word "may" in a statute did not necessarily mean the procedural implementation of the statute was discretionary. *Id.* at 515.

42. *Id* at 521. Section 1981a gives the Secretary the authority to defer principal and interest payments and forego foreclosure when due to circumstances beyond the borrower's control, the borrower is unable to continue making payments without unduly impairing his standard of living. 7 U.S.C. § 1981a (1982). See *supra* note 6 for the text of § 1981a. The court enjoined FmHA from failing to implement § 1981a. *Curry,* 541 F. Supp. at 525. The court ordered FmHA to provide the plaintiffs with personal notice of the deferral provisions and to promulgate regulations on the eligibility criteria of § 1981a similar to those used pursuant to the moratorium provision of the Rural Housing Loan Program. *Id.* at 526. *See* 42 U.S.C. § 1475 (1982) (Rural Housing Loan moratorium). The court found that 42 U.S.C. § 1475 and 7 U.S.C. § 1981a were drafted with comparable language but only 42 U.S.C. § 1475 was being implemented pursuant to regulations prescribing the eligibility criteria. *Curry,* 541 F. Supp. at 517. The court determined that Congress therefore impliedly intended § 1981a to be implemented in a similar manner. *Id.* The court based its reasoning on the standard rule of statutory construction that provides that similar language should be given similar interpretation. *Id.* at 518 (citing Northcross v. Board of Educ. of Memphis City Schools, 412 U.S. 427, 428 (1973)).

For regulations promulgated to implement 42 U.S.C. § 1475 (1982), see 7 C.F.R. § 1951.17 (1981) (amended by removing and reserving § 1951.17 and adding 7 C.F.R. § 1951(G) (1983)). For provisions requiring notice of the availability of moratorium relief, see 7 C.F.R. § 1951.313(b) (1) (i-iii) (1983).

43. Coleman v. Block, 562 F. Supp. 1353, 1359 (D.N.D. 1983).

44. *Id.* at 1355.

45. *Id.* The defendants argued that plaintiffs had three tiers of administrative review available

failed to meet this burden when it failed to specify which plaintiffs had not exhausted their remedies and which remedies the plaintiffs had not exhausted.[46]

In order to qualify for class action status, the plaintiffs had to meet the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure.[47] The court found that the plaintiffs had met all the prerequisites of the federal rule and granted class certification to the plaintiffs.[48] The certified class consisted of all persons who had received or who were eligible or might be eligible in the future to receive a farm program loan that the FmHA would administer through its offices within the State of North Dakota.[49]

After resolving the procedural objections raised by the defendants and the issue of class action status, the court addressed the primary issue: whether the court should grant a preliminary injunction to the plaintiffs.[50] Plaintiffs asked the court for a two-part injunction. First, they asked that the court enjoin FmHA from taking adverse action against the holders of FmHA farm program loans until FmHA promulgated regulations implementing section

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under 7 C.F.R. §§ 1900.51-.60 (1982). *Id.* Congress, however, revised these regulations, effective April 1, 1982, to reduce steps in the appeal process and to reduce delays in completing the administrative appeal process. *Id.* For the text of the revised regulations, see 47 Fed. Reg. 13,758 (1982) (codified in 7 C.F.R. §§ 1900.51-.60 (1983)).

46. *Coleman*, 562 F. Supp. at 1355. The court determined that failure to exhaust administrative remedies did not bar the plaintiff's action. *Id.* The court stated that the requirement of exhaustion of remedies would impose an impossible burden on plaintiffs in the class of persons who held FmHA loans but had not yet been foreclosed upon because the decision to foreclose or to accelerate the loan must be made before it is possible to exhaust remedies. *Id.* The purpose of the doctrine of exhaustion of remedies is for administrative rather than judicial resolution of dispute. *Id.* The litigation in the instant case concerned the existence of several rights that the plaintiffs claimed were statutory and constitutional in nature; such issues require resolution by the judiciary. *Id.* at 1356.

The objective of exhaustion is to prevent premature interference with agency processes, to enable the agency to function efficiently, and to give the agency an opportunity to correct its own errors. The doctrine gives the parties and courts the benefit of agency experience and expertise and allows the agency to compile a record that is adequate for judicial review. *Id.* at 1355 (citing Weinberger v. Salfi, 422 U.S. 749, 765 (1975)).

47. *Coleman*, 562 F. Supp. at 1356.

48. *Id.* at 1356. Rule 23(a) of the Federal Rules of Civil Procedure provides as follows:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claim or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

FED. R. CIV. P. 23(a). Rule 23(b) provides:

> An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
> . . . .
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . .

Id. 23(b).

49. *Coleman*, 562 F. Supp. at 1359.

50. *Id.*

1981a of title 7.[51] Second, plaintiffs requested that the court enjoin FmHA from taking any loan-servicing action that would deprive the plaintiffs of property necessary for farm operation or living expenses until FmHA promulgated regulations giving plaintiffs notice of the action, the reasons for the action, and an opportunity for a hearing before an impartial hearing examiner.[52]

The court applied a four-part test to determine whether to grant injunctive relief. Under the test, the court balanced the threat of irreparable harm to the plaintiffs, the harm to the defendants from granting the injunction, the probability that plaintiffs would prevail on the merits, and the public interest involved.[53]

In analyzing the first factor, the court determined that if it did not grant the injunction, the plaintiffs would suffer irreparable harm.[54] They would lose their land and farm equipment and would have to move from their farms.[55] In balancing the second factor, FmHA did not present the court with any information indicating that harm would result if the court granted the injunction.[56] The court recognized that an estimate of the financial harm to FmHA would be highly speculative. The second factor, therefore, did not weigh heavily in the court's decision.[57] The court next considered the probability that the plaintiffs would succeed on the merits.[58] In analyzing this third factor, the court considered separately the two legal bases upon which the plaintiffs sought the injunction.[59]

Initially, the court considered whether FmHA had refused to grant certain rights explicitly or implicitly granted to borrowers in section 1981a.[60] First, the court determined that FmHA must give

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51. *Id.*

52. *Id.*

53. *Id.* (citing Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981)). In the balance, no single factor is determinative of whether to grant injunctive relief. The court must consider the relative injuries to the parties and the public. Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d at 113.

54. *Coleman*, 562 F. Supp. at 1359.

55. *Id.* at 1359-60.

56. *Id.* at 1360. The court stated that the injury to the plaintiffs would be the loss of their farms and necessary living and operating expenses. *Id.* FmHA would suffer loss of interest on the loans and loss of value in the security caused by delays resulting from following additional procedures. *Id.* Implementing the procedures in North Dakota would involve some additional cost. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* Plaintiffs alleged that FmHA had refused to recognize the following rights:

> [T]he right to notice that loan deferral may be obtained; the right to a hearing to present evidence for such a deferral; the right to a written decision specifying why deferral was denied; the right to be provided more specific standards for establishing deferral eligibility; and the right to appeal within the FmHA a denial of deferral.

Id. The court found that none of the rights plaintiffs sought were explicit in the statute and proceeded to determine whether the statute implied the rights. *Id.* at 1361. Both sides presented cases in which courts engaged in an extensive analysis of whether Congress' intent in drafting § 1981a implied the

notice to the borrowers that deferral relief is available to applicants who meet the eligibility requirements.[61] The statute explicitly states that a borrower may request relief.[62] The court determined that the language of the statute implies that a borrower should know that a loan deferral is available.[63]

Second, the court found that FmHA must give the plaintiffs an opportunity to be heard prior to FmHA's decision to terminate the borrower's allowance for necessary living and operating expenses.[64] The court noted that it was necessary to hear the farmers' contentions to obtain accurate information because the farmers are the persons most familiar with the reasons for their inability to make payments.[65] In addition, the court decided that FmHA must give its borrowers a written statement informing the borrower of the reasons why it did not grant a loan deferral.[66] The court found that further specification of standards was necessary to give notice to the applicant of the eligibility requirements for a loan deferral.[67]

The court denied the right for an agency appeal of the moratorium denial.[68] The court asserted that an opportunity to have a hearing, a written decision stating the reasons for the denial, and the requirement of more specific standards would insure that the court give the borrowers' request for relief fair consideration.[69] The court did not require FmHA to adopt regulations to implement section 1981a. The court believed that FmHA could

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rights plaintiffs sought. The *Coleman* court determined that it could resolve the issue more directly. *Id.*

61. *Id.* at 1361. The court determined that it was the responsibility of the FmHA to inform the borrower of the loan deferral provisions. The court stated, "[W]e cannot expect the ordinary farmer to spend his extra hours in a federal depository, probably at least one 100 [sic] miles away from his farm, reading the United States code and the Federal Register." *Id.*

62. *See* 7 U.S.C. § 1981a (1982). The statute provides that "the Secretary may permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured, or held . . . by the Farmers Home Administration." *Id.*

63. *Coleman*, 562 F. Supp. at 1361.

64. *Id.* at 1361-62. A predetermination hearing is necessary because once termination of the farmer's income occurs, he will be permanently out of business and ineligible for a loan deferral. *Id.* at 1362.

65. *Id.* at 1361.

66. *Id.* at 1362. The court stated that "a decision [requiring that FmHA provide its borrowers with written statements of reasons for denying loan deferral] is required both to insure that the Secretary gives full consideration to the borrower's request and to give the borrower a basis on which to review the decision." *Id.*

67. *Id.* The court found that more specific standards were needed to inform a borrower of how FmHA made its determination of living standards, how severe an impairment must be, what constituted a reason beyond the borrower's control, how severe the reason must be, and how long a temporary inability to pay may last. *Id.*

68. *Id.*

69. *Id.* The court noted that two other deferral statutes did not contain regulations providing for appeals of a denial of deferral. *Id. See* 7 U.S.C. § 1981(d) (1982), 42 U.S.C. § 1475 (1982). *But see* 7 C.F.R. § 1951.313(d), providing that upon denial of deferral on rural housing loans, under 42 U.S.C. § 1475, "[t]he borrower may appeal an adverse action on the request for moratorium, extension, or cancellation of interest accrued during the moratorium." 7 C.F.R. § 1951.313(d) (1983)).

fulfill its statutory duty without promulgating additional regulations.[70]

After analyzing the probability that the plaintiffs would win on the merits under the first part of the injunction, the court examined the proposed injunction's second part.[71] The court considered whether it should enjoin FmHA from taking loan-servicing action that deprived the plaintiffs of their property rights without due process of law.[72]

Before discussing the property rights, the court examined the context in which the termination of living and operating expenses occurs.[73] Once a farmer is eligible for a loan, the FmHA must secure the loan by requiring a first lien on all property or products acquired, produced, or refinanced with loan funds and by additional security when necessary.[74] FmHA provides management assistance[75] and credit counseling[76] to borrowers in order to set up a farm home plan.[77] When the annual income of a borrower, pursuant to the farm home plan, meets or exceeds predetermined expectations, FmHA releases its lien on the secured property.[78] The borrower uses proceeds from the sale of crops or livestock to make payments according to the plan.[79] When the income falls below that originally planned for the year, the county supervisor for FmHA, in consultation with the borrower, determines how to use the income.[80] FmHA regulations give first priority to paying farm and home expenses.[81] If, however, the county supervisor believes that the borrower is in default,[82] the

70. *Coleman*, 562 F, Supp. at 1362. The court stated that FmHA could choose its own means to implement § 1981a, as long as it did so adequately. *Id.* at 1362-63.

71. *Id.* at 1363. Plaintiffs asked that FmHA conduct its collection proceedings on FmHA loans pursuant to constitutionally mandated standards, thus preventing FmHA from depriving plaintiffs of valuable property rights without a hearing. Brief for Plaintiff at 1, Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983).

72. 562 F. Supp. at 1363.

73. *Id.*

74. 7 C.F.R. § 1941.19 (1984). Additional security may consist of the best lien available in chattels, real estate, or other property. *Id.* After acquiring a security interest, property acquired that is of the same type as the collateral will be used to secure that debt. 7 C.F.R. § 1941.79(b) (1984). This means that the debt will encumber property, livestock, or crops acquired after the security agreement is made. *Id.*

75. 7 C.F.R. § 1924.55 (1984).

76. *Id.* § 1924.56.

77. *Id.* § 1924.57(c). The county supervisor is responsible for assisting the applicant or borrower in completing the plans required by planning with the applicant for appropriate use of income. *Id.* The first priority for use of the income is for family living and farm operating expenses. *Id.* § 1924.57(c)(4)(i).

78. *Id.* § 1962.17.

79. *Id.*

80. *Id.* § 1962.17(c).

81. *Id.* § 1962.17(c)(1).

82. *Coleman*, 562 F. Supp. at 1363. The regulations define default as "[f]ailure of the borrower to observe the agreements with FmHA as contained in notes, security instruments, and similar or related instruments." 7 C.F.R. § 1962.4(g) (1984).

supervisor may decide to liquidate all secured property except that which is essential for minimal family living needs.[83] FmHA then may refuse to release its lien on the proceeds of the borrower's crops or livestock, thus cutting off the borrower's income.[84]

With this background, the court considered whether FmHA must grant the plaintiffs a hearing before terminating payment of farm and home expenses.[85] First, the court considered whether FmHA's refusal to release the lien on crops and livestock without a pretermination hearing constituted a deprivation of property without due process.[86] The court noted that in *Sniadach v. Family Finance Corp.*[87] the Supreme Court held that a prejudgment garnishment statute unconstitutionally violated due process guarantees because it allowed the seizure of wages before any judicial hearing.[88] Likewise, in *Fuentes v. Shevin*[89] the Supreme Court found replevin statutes violated due process because they allowed the seizure of chattel property without prior notice and an opportunity to be heard.[90]

The *Coleman* court distinguished *Sniadach* and *Fuentes* finding that FmHA was a secured creditor unlike the creditors in *Sniadach* and *Fuentes*.[91] The court noted that it was a well-established rule of law that, upon default by the debtor, a secured creditor has the right to take possession of the collateral without prior judicial action if the creditor can do so without a breach of the peace.[92] The court found that FmHA, by refusing to release its lien on the borrower's crops and livestock, was using self-help to take possession of its

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83. 7 C.F.R. § 1962.40 (1984).

84. 562 F. Supp. at 1363 (citing 7 C.F.R. § 1962.40 (1983)). When FmHA makes a decision to liquidate a loan, FmHA encourages borrowers to sell their property to pay the debt. 7 C.F.R. § 1962.41 (1984). If the borrower does not voluntarily sell the secured property within 60 days, FmHA gives the borrower notice that it will accelerate the loan and that the balance is due immediately. *Id.* § 1872.17(c). FmHA notifies the borrower at this time that he has thirty days to request an appeal of the decision to accelerate the loan. *Id.* § 1900. 56(a)(3). FmHA schedules a hearing within 45 days of the request. *Id.* § 1900.56(c)(3). Generally the hearing officer will make a decision on the action within 30 days of the hearing. *Id.* § 1900.57(g).

85. *Coleman*, 562 F. Supp. at 1363.

86. *Id.* at 1364.

87. 395 U.S. 337 (1969). Plaintiffs argued that the farmer-borrower is in the same position as the wage earner in Sniadach v. Family Finance Corp., in which the creditor seized the debtor's wages prior to any judicial hearing. *Coleman*, 562 F. Supp. at 1364. *See* Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969).

88. *Sniadach*, 395 U.S. at 342.

89. 407 U.S. 67 (1972).

90. Fuentes v. Shevin, 407 U.S. 67, 80-93 (1972).

91. 562 F. Supp. at 1364. Most of the creditors in *Fuentes*, however, were secured creditors who had sold goods under conditional sales contracts. *See Fuentes*, 407 U.S. at 70-72. The sales contracts provided that upon a default, the seller could take back the merchandise. *Id.* at 95. The Supreme Court stated that the waiver provision did not eliminate the appellant's right to a preseizure hearing. *Id.* at 96. The Court held that the prejudgment replevin statutes were unconstitutional because they denied an opportunity for a hearing before seizure of the chattels. *Id.* at 96.

92. 562 F. Supp. at 1364 (citing N.D. CENT. CODE § 41-09-49 (Supp. 1981), U.C.C. § 9-503 (1976)).

collateral.[93]

While the court rejected the *Sniadach-Fuentes* argument, it found that participation of a borrower in the loan program constituted a legitimate property interest.[94] The court also found that FmHA's status as a governmental agency placed restrictions on its loans that did not apply to commercial loans.[95]

The court then applied the three-part test set forth in *Mathews v. Eldridge*[96] to determine whether due process standards required a hearing prior to the termination of these governmental benefits.[97] The first part of the test examines the private interest involved.[98] The court found that this interest was significant. Termination of a borrower's loan program begins with FmHA's refusal to release income for necessary living and operating expenses. This refusal can leave a farm family without money for food and force them to quit farming.[99]

The second part of the test analyzes the risk of erroneous deprivation.[100] The court found that the procedure followed by FmHA was not adequate to protect against erroneous termination of benefits.[101]

The third part of the test involves the significance of the government's interest.[102] The court found that the government's interest in not providing more extensive pre-termination procedures was slight. The court reasoned that FmHA already provided for a hearing after the termination, and therefore the cost

93. 562 F. Supp. at 1364. Self help indicates that the parties have taken no prior judicial action. *Id.*

94. *Id.* The court determined that FmHA loans were in part a form of social welfare and, as a result, the farmers loan program was a governmental benefit in which plaintiffs held a valid property interest. *Id.* The court found that when a borrower began a loan program with FmHA he had a "strong expectation" that it would continue to its scheduled date and that he would receive the necessary living and operating expenses as planned. *Id.*

95. *Id. See also* 7 U.S.C. § 1981(d) (1982), 42 U.S.C § 1475 (1982) (FmHA, unlike private lenders, has wide authority to compromise or adjust loans); 7 C.F.R. § 1962.17(c)(1) (1983) (FmHA, unlike private lenders, must make provisions for the borrowers' living and operating expenses); 7 C.F.R. § 1962.4(g)(1) (1983) (when a borrower is delinquent, FmHA must consider whether the inability or refusal to make payments is due to lack of diligence, lack of sound farming, or other circumstances within the borrower's control).

96. 424 U.S. 319 (1976).

97. 562 F. Supp. at 1365 (citing Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976)).

98. 562 F. Supp. at 1365.

99. *Id.*

100. *Id.*

101. *Id.* at 1366. The court stated:

> [T]he procedure used for termination is woefully inadequate if not nonexistent: it is entirely unilateral; it requires no notice to the borrower prior to termination; it provides no opportunity for comment; it provides no notice of the right to appeal the termination until over sixty days after the termination of necessary living and operating allowances; and it allows appeal of the termination, at the very earliest, over 60 days from the date of termination.

Id.

102. *Id.*

of having the hearing before termination would not be burdensome.[103]

After considering all three factors, the court determined that the plaintiffs' interest in having a hearing prior to the termination of benefits outweighed the defendants' interest in not having the hearing.[104] The court concluded that the plaintiffs' motion for a preliminary injunction had substantial merit.[105] Because of insufficient evidence, however, the court did not rule on the plaintiffs' contention that using state or district directors as appeals officers subjected farmers to a biased tribunal.[106]

Finally, the court considered what effect granting a preliminary injunction would have on the public interest.[107] The court stressed that the public interest was not only to save money, but also to insure fair treatment of citizens and to avoid erroneous termination of important benefits.[108] Based on the above analysis, the court in *Coleman I* granted a statewide preliminary injunction.[109]

IV. THE PERMANENT INJUNCTION — COLEMAN II

The case of *Allison v. Block*[110] was pending before the Eighth Circuit at the time the plaintiffs in *Coleman* initiated their suit.[111] In *Allison* the United States Court of Appeals held that section 1981a required the Secretary to establish uniform procedural and

103. *Id.* The court previously required FmHA to hold a pretermination hearing for loan deferrals pursuant to § 1981a. The court noted that expanding this hearing to include the issue of default would not create much additional cost to the government. *Id.*

104. *Id.* To implement a pretermination hearing, FmHA must give the borrower notice of his opportunity to request a hearing on the validity of the termination and a statement of the reasons why FmHA terminated his loan. *Id.* This hearing will give plaintiffs an opportunity to present additional information and clarify any factual evidence. *Id.*

105. *Id.*

106. *Id.* at 1366. The due process clause entitles a person to an impartial and disinterested tribunal. Brief for Plaintiff at 37, Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983) (citing Marshall v. Jemco, Inc., 446 U.S. 238 (1980)). The plaintiffs claimed the FmHA's appeals process was biased because appeals officers are involved in the initial decision to liquidate. 562 F. Supp. at 1366. *See* 7 C.F.R. §§ 1962.40, 1960.5, 1960.13(a), 1900 (B) (1984). When FmHA liquidates loans secured by real property, the hearing officer is chosen by his immediate supervisor, who made the initial decision to liquidate the loan. *See* 7 C.F.R. §§ 1872.17(c), 1955.5 (1984).

107. 562 F. Supp. at 1366.

108. *Id.* at 1366-67. The court found that the public interest was basically the same as the government's interest addressed earlier because the cost of providing a hearing prior to termination of benefits would not be burdensome to FmHA since FmHA already provided for a hearing after termination. *Id.* at 1366.

109. *Id.* at 1367.

110. 723 F. 2d 631 (8th Cir. 1983).

111. Coleman v. Block, 580 F. Supp. 194, 201 (D.N.D. 1984). In Allison v. Block the Court of Appeals for the Eighth Circuit rejected FmHA's contention that "Congress left the implementation of section 1981a a matter of unfettered administrative discretion." Allison v. Block, 723 F. 2d 631, 635 (8th Cir. 1983).

substantive standards applicable to deferral applications.[112] The court stated that the procedural requirements must include notice and an opportunity to be heard.[113]

The court also required FmHA to establish substantive standards which, if met by a borrower, would entitle him to deferral relief pursuant to section 1981a.[114] The court stated that development of substantive standards would facilitate the Secretary's good faith consideration of a borrower's eligibility for relief.[115]

The *Allison* decision was binding on the court in *Coleman v. Block*.[116] Following *Allison* the court in *Coleman* rejected the government's argument that section 1981a was discretionary and that existing FmHA deferral regulations were adequate.[117]

In *Allison* the court did not require FmHA to establish substantive standards by formal rule making.[118] The court held, however, that FmHA must clearly articulate each section 1981a decision in a matter susceptible to judicial review for abuse of discretion.[119] In *Coleman* the court recognized this and declined to require the Secretary to promulgate regulations to implement section 1981a.[120] In addition, the court rejected the borrowers' request for a further level of administrative review in cases where FmHA denied section 1981a deferral relief.[121]

The *Coleman* decision resolved several issues that the *Allison* decision did not.[122] For example, in *Coleman* the court required FmHA to give borrowers notice and an opportunity to be heard prior to the termination of allowances for living and operating expenses.[123]

In addition to the issues resolved by *Allison,* one of the first issues the *Coleman* court addressed was whether the Administrative

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112. *Allison*, 723 F.2d at 634.

113. *Id.* The court stated that the legislation which resulted in the enactment of section 1981a was aimed at giving people a chance and helping farmers to stay on their land by halting farm loan foreclosures. *Id.*

114. *Id.* at 636.

115. *Id.* at 638.

116. Coleman v. Block, 580 F. Supp. 194, 201 (D.N.D. 1984).

117. *Id.*

118. *Allison*, 723 F.2d at 638. The court noted that formal rule-making would insure a more uniform set of substantive standards to govern section 1981a requests. It realized, however, that development of criteria through the adjudicative processes would give precedential effect to prior FmHA loan deferral decisions. *Id.*

119. *Id.*

120. *Coleman*, 580 F. Supp. at 201 & n.48.

121. *Id.*

122. *Id.* at 201-12.

123. *Id.* at 208. The court concluded that FmHA must give borrowers notice and an opportunity to present evidence before the county supervisor takes action to liquidate the mortgage and freeze the borrowers' stream of income. *Id.* For the court's reasoning in requiring notice and an opportunity for a hearing, see *supra* notes 85-109 and accompanying text.

Procedures Act (APA) provisions regarding administrative appeal hearings[124] applied to FmHA agency actions.[125] The plaintiffs contended that under the provisions of the APA, the borrowers could appeal FmHA agency decisions denying deferral relief based on section 1981a.[126]

APA provisions provide for judicial review for anyone who suffered a legal wrong or was adversely affected by an agency action.[127] The court stated that under FmHA regulations, the Secretary may provide for appeal and review.[128] Since the APA provisions provide for mandatory appeal and review and the FmHA regulations grant the Secretary discretionary power to provide for appeal procedures, the court found that the APA did not apply to FmHA foreclosure, acceleration, and denial of deferral hearings.[129] FmHA must base its decisions on statutory requirements or on objective standards, or the decision may be set aside if it was arbitrary, capricious, or an abuse of discretion.[130]

Upon finding that the APA did not apply to FmHA appeals, the court considered whether the existing FmHA appeal regulations met minimum procedural due process requirements.[131] Because the borrower is not notified of his right to appeal the FmHA's liquidation decision until after the FmHA has stopped the borrower's income stream, the court determined that the FmHA's appeal procedures violated the due process clause of the Constitution.[132] The court recognized the distinction imbedded in

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124. Administrative Procedures Act, ch. 324, 60 Stat. 237 (codified at 5 U.S.C. §§ 551-576 (1982).

125. *Coleman*, 580 F. Supp. at 201-02. The provisions of the Administrative Procedures Act (APA) apply to "*every* case of adjudication required by statute to be determined on the record after opportunity for a hearing." *Id.* at 201 (emphasis added).

Provision for FmHA appeal and review procedures under 7 U.S.C. § 1983(b) are inconsistent with the APA provisions. Under § 1983(b) the Secretary has discretionary power to provide for appeal and review. *Coleman*, 580 F. Supp. at 201-02 (citing 7 U.S.C. § 1983(b) (1982)). The court reasoned that the plain language of the two statutes demonstrated that the APA appeal provisions did not apply to FmHA foreclosure, acceleration, or denial of deferral hearings. *Coleman*, 580 F. Supp. at 202.

FmHA borrowers may not appeal FmHA decisions based on statutory requirements or on objective standards included in published regulations. *Id.* at 201 n.48 (citing 7 C.F.R. § 1900.53(a) (1983)). If, however, agency decisions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," a court or an agency can set aside the decision. *Coleman*, 580 F. Supp. at 201 n.48 (citing 5 U.S.C. § 706(2)(a) (1976).

126. *Coleman*, 580 F. Supp. at 201-02.

127. *Id.* at 201.

128. *Id.* at 201-02.

129. *Id.*

130. *Id.* at 201 n.48.

131. *Id.* at 202.

132. *Id.* at 203. The court discussed FmHA procedures as follows:

> The decision to liquidate results in a major restructuring of the relationship between the borrower and the government lender. The dual responsibility of running a form of social welfare legislation while administering a loan program immediately transforms into a single focus: reducing the loss incurred. In regards to the release of proceeds and

the law between farm products and inventory and equipment.[133] The court stated that the difference reflected a fundamental element of our social thinking, *i.e.*, that a laborer is worthy of his hire. The "hire" of a farm operator is the crop he raises. The farmer's interest in his crop is just as significant as a worker's interest in his wages. The court noted that there are several laws which reflect a concern for the person whose labor produces the crops.[134]

The court stated that given the impact of the decision to liquidate, which freezes the debtor's income stream, and the fact that FmHA already provided for a right to appeal, the appeal process must be at a reasonable time and in a meaningful manner.[135] The court then discussed the significance of two Supreme Court decisions, *Goss v. Lopez*[136] and *Mathews v. Eldridge*.[137]

The court cited *Goss* for the proposition that in some cases, due process does not require a full trial.[138] The Supreme Court in *Goss* found that on a question of adjudicative fact, notice and an opportunity for an informal hearing can satisfy due process.[139]

The second Supreme Court case the *Coleman* court discussed was *Mathews v. Eldridge*.[140] The court cited *Mathews* for the proposition that the main reason for denying a trial may be that the

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all other general day-to-day decisions, no consideration is given to the possibility that liquidation should not have occurred. After the unilateral decision to liquidate is reached, "it is FmHA policy to liquidate *all* security. . . ." 7 C.F.R. § 1962.40 (emphasis added). The only exception is for "EO [Economic Opportunity] property that the county supervisor determines is essential for minimum family needs," but not in excess of $600. *Id.* The county supervisor then attempts to persuade the farmer to voluntarily liquidate. It is only after progress in obtaining a "voluntary" liquidation has stopped, or sixty days after FmHA has frozen the farmer's income stream by refusing to release his crop proceeds, that FmHA first informs a farmer-borrower of a right to appeal from the decision to liquidate. 7 C.F.R. § 1900.56(a)(3). Such a system does not comport with basic procedural due process considerations.

Id. at 202-03.

133. *Id.* at 203 (citing U.C.C. § 9-109(2), (3), (4)).

134. *Coleman*, 580 F. Supp. at 203. The court noted that there are many laws which protect the fruits of labor. The court listed several examples of these laws, such as wage protection in garnishment statutes, wage claim priorities in bankruptcy proceedings, exemptions for process for growing crops, and crop prodution liens. *Id.*

135. *Id.* at 203-04. The court stated that an appeal process meaningful in time and manner would comport with FmHA's duty to assist farmers who need help. *Id.* at 204 & n.51A. The court stated that FmHA should not make a decision to liquidate until it had exhausted reasonable efforts to act wisely. *Id.* at 204.

136. 419 U.S. 565 (1975).

137. 424 U.S. 319 (1976).

138. *Coleman*, 580 F. Supp. at 205 (quoting K. DAVIS, ADMINISTRATIVE LAW ch. 13 (2d ed. 1979)). The court stated that providing a party with the nature of the evidence against him and listening to what he has to say is in many cases a better procedure than that afforded by a trial-type hearing, which is often cumbersome of expensive or both. *Id.* at 206 (quoting K. DAVIS, ADMINISTRATIVE LAW, *supra*).

139. Goss v. Lopez, 419 U.S. 565, 581-84 (1975).

140. 424 U.S. 319 (1976).

agency's informal procedure is adequate.[141] The court also noted that *Mathews* required that the appeal process be meaningful.[142] Relying on *Goss* and *Mathews,* the court in *Coleman* determined that an informal hearing prior to an agency decision to liquidate a loan would satisfy procedural due process requirements.[143]

While the court required FmHA to have an informal hearing prior to agency action, the court found the existing appeals procedures were adequate.[144] The plaintiffs had contended that the existing appeal process subjected FmHA borrowers to a biased tribunal.[145] The borrowers based their argument on the fact that when FmHA liquidates loans secured by chattels, the hearing officer on appeal was involved in the initial decision to liquidate.[146] When FmHA liquidates loans secured by real property, the hearing officer on appeal was chosen by his immediate supervisor, who made the decision to liquidate.[147]

The court, however, found that the existing appeal procedure was adequate to meet the due process standards. If the borrower raised the issue of bias, FmHA could resolve that issue at later stages of the review.[148] The court stated that a biased decision constituted an abuse of discretion and as such, could be set aside.[149]

After finding that FmHA's existing review procedures were adequate, except that notice and an opportunity for a hearing must come prior to agency action, the court determined that it had properly granted the plaintiff's motion to expand the statewide class to a national class.[150] The court also found that the national class properly excluded those borrowers who were already involved

141. *Coleman*, 580 F. Supp. at 207 (citations omitted). The contribution of *Mathews* is the notion that adequate informal procedures may make trial-type hearings unnecessary and possibly undesirable. *Id.* The court noted that a protected property interest must exist before the due process rights of notice and a hearing arise. *Id.* at 207-08 (citing Mathews v. Eldridge, 424 U.S. 319, 332 (1976)). While the *Coleman* court questioned the desirability of this requirement, it clearly found that a property interest existed in a chattel mortgage. *Id.* at 208. The court recognized the distinction between a security interest and a possessory interest in the mortgaged property. The court did not, however, elaborate on the rights attendant to each interest. *Id.*

142. *Id.* at 203-04.

143. *Id.* at 208.

144. *Id.* The court held that, while existing FmHA review procedures were adequate, FmHA must redesign the procedures so that a review of the decision to liquidate would take place before FmHA took action to liquidate. *Id.* The court also held that FmHA may keep notes of the hearings as opposed to keeping a verbatim record. *Id.*

145. Coleman v. Block, 562 F. Supp. 1353, 1355 (1983). The court in *Coleman I* stated that it did not have sufficient evidence to address the plaintiffs' arguments regarding the built-in bias of using the state director or other district directors as hearing officers, and would consider this issue in its order for a permanent injunction. *Id.* at 1366.

146. *Id.* at 1366. See *supra* note 106 and accompanying text for a discussion of the FmHA's appeal process.

147. *Coleman*, 562 F. Supp. at 1363.

148. Coleman v. Block, 580 F. Supp. 194, 208 (1984).

149. *Id.* at 201 n.48; 208.

150. *Id.* at 208.

in a suit that raised *Coleman* issues.[151]

FmHA contended that the nationwide class should not include potential members of the class in districts or circuits where a court had already decided or borrowers had raised issues from *Coleman*.[152] The result of such an exclusion would be that the rule of law in those circuits or districts would bind class members even though they were not litigants in those circuits or districts.[153] The court denied FmHA's argument, concluding that this would fragmentize the class into dozens of subclasses, and as such, would undermine the judicial economy and efficiency of national class actions.[154]

The court found that the injunction did not apply in situations where:

> 1) a borrower had abandoned the property;[155]
>
> 2) a borrower knowingly and voluntarily consented in writing to the foreclosure;[156]
>
> 3) a borrower was guilty of conversion;[157]
>
> 4) a borrower had initiated bankruptcy and the trustee in bankruptcy abandoned the property to the United States or another lienholder, and the borrower was discharged in bankruptcy.[158]

The final issue the court resolved was whether it should make the injunction permanent.[159] In determining this issue in favor of

151. *Id.* at 208-09. *Coleman* issues include the implementation of 7 U.S.C. § 1981(a), the constitutionality of a pre-hearing cut-off of necessary living and operating expenses, and the constitutionality of the FmHA's appeal process. *Id.* at 208.

152. *Id.*

153. *Id.* The court noted that if a class member brought a suit in a circuit that had resolved issues from *Coleman*, the circuit decision would bind the district court. *Id.* at 208-09. In addition, the principle of res judicata would bar from the nationwide class FmHA borrowers who had actually litigated their claims and received a final judgment. *Id.* at 208.

154. *Id.* at 208-09.

155. *Id.* at 209, 211. The court excluded borrowers who had totally abandoned the property. The court stated that FmHA could take preventative measures to protect secured property when there was an emergency situation, such as "inevitable irreparable injury due to abandonment of the property." *Id.* at 209. Once the risk no longer exists, FmHA must comply with the injunction. *Id.* at 211.

156. *Id.* at 209, 211. The court stated that FmHA could proceed against farmers who knowingly and voluntarily consented in writing to foreclosure. The court stated, however, that when a borrower consents to foreclosure after FmHA has terminated or substantially reduced living and operating expenses, FmHA must establish in a later proceeding challenging the foreclosure that the borrower voluntarily made the decision to allow foreclosure. *Id.* at 211.

The court stated that the farmer's decision should not be a result of the termination or reduction of benefits and that the borrower should make his decision with knowledge of his right to appeal and to request deferral relief under section 1981a. *Id.*

157. *Id.* at 209, 211. The court stated that even though a borrower was guilty of conversion, determined either by admission or judicial adjudication, FmHA must still give the borrower an opportunity to apply for deferral relief under section 1981a. *Id.* at 211. FmHA may, however, take steps to prevent injury to the property, terminate living and operating expenses, and initiate foreclosure. *Id.*

158. *Id.* at 209, 211-12.

159. *Id.* at 209-10.

the borrowers, the court applied a three-part test.[160] The court considered whether the plaintiffs had succeeded on the merits, whether equity required granting injunctive relief, and the form of injunctive relief the court should grant.[161]

The court determined that at the trial, the borrowers had succeeded on the merits of their claim by obtaining the temporary injunctive relief that was the basis of their suit.[162] The court found that the claims of the plaintiffs were well-founded and as a result, determined that the law should afford the borrowers a remedy.[163]

In balancing the equities, the court considered the threat of irreparable harm to the borrowers, the harm to FmHA, and the public interest.[164] In *Coleman I* the court had extensively evaluated the same factors when it made its decision to grant a preliminary injunctive relief.[167] The relief the court granted required FmHA to contained in the order granting a preliminary injunction, the court granted a permanent injunction.[166]

The final issue the court addressed concerned the form of the injunctive relief.[167] The relief the court grantedrequired FmHA to give borrowers across the nation notice and an opportunity to be heard prior to the termination of benefits.[168]

V. CONCLUSION

The *Coleman* decisions, unlike prior decisions, determined that the farmers' interest in continuing participation in the farm loan program was a constitutionally protected property interest.[169] These decisions modify FmHA's right to liquidate the farmer's debt under the security agreement. Unlike other secured creditors,

160. *Id.* at 209.
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.* at 210.
165. *Id.* See *supra* notes 53-109 and accompanying text for a discussion of the *Coleman I* factors.
166. *Coleman*, 580 F. Supp. at 210. The court granted the permanent injunction based on the evidence presented at the trial on the merits, the national scope of FmHA's regulations, and the parties, stipulations that the statewide class was representative of the national class. *Id.*
167. *Id.*
168. *Id.* Benefits protected include previously determined living and operating expenses and any property used to secure an FmHA loan. *Id.* The required notice must inform the borrower of his right to an informal hearing to determine eligibility for § 1981a relief, include a written statement containing the factors necessary to establish that relief, and contain a written statement of the reasons for the proposed termination or liquidation. *Id.* The notice must also inform the borrower of the official who would preside at the informal hearing. The court stated that that official cannot be someone who was actively involved in the initial determination to liquidate the loan. *Id.*
169. *Coleman*, 562 F. Supp. at 1364-65.

FmHA can no longer declare default and take possession of the collateral without notice and a hearing.[170]

The *Coleman* decisions also prohibit FmHA from accelerating or foreclosing on farm borrowers until the agency informs the borrowers of their right to contest the action. FmHA must also inform the borrower of his right to request deferral relief.[171] FmHA can no longer demand voluntary conveyance or attempt to deprive farmers of any property secured by FmHA unless it first gives notice of the right to request a deferral.[172]

These decisions also prevent FmHA from terminating previously determined living and operating allowances unless FmHA first informs the borrower of the reasons for the termination, the right of the borrower to challenge the termination, and the right to apply for deferral relief.[173] Farm Home Plans may become the subject of negotiations because FmHA can no longer unilaterally terminate assistance based on the assumed protection found in the security agreement.[174]

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170. *Coleman*, 580 F. Supp. at 210-11. FmHA cannot take collection actions that have adverse effects on the assistance called for in the farm and home plan. *North Dakota Lawsuit: Pre-Termination Hearing Required,* SMALL FARM ADVOCATE 8 (1983).

171. 580 F. Supp. at 210-11.

172. *Id.*

173. *Id.*

174. *Brief Guide to Security Agreements: New Role for FmHA Farm Plans,* SMALL FARM ADVOCATE 6 (1983).