

## Innovative Lawsuit Targets U.S. Bank’s Government-Backed Mortgages

By Whitney Florian, J.D. Candidate 2017 | December 4, 2014

U.S. Bank, a division of U.S. Bancorp, is being [sued](#) in an Ohio federal court for failing to comply with the Federal Housing Administration (“FHA”) requirement that banks engage with borrowers in default. [Advocates for Basic Legal Equity](#) (“ABLE”), a legal aid group, filed the first-of-its-kind suit on behalf of the United States government.

The lawsuit focuses on mortgages guaranteed by the FHA under the authority of the U.S. [Department of Housing and Urban Development](#). When a borrower defaults on an FHA-guaranteed mortgage, the FHA reimburses the lending bank. ABLE claims U.S. Bank collected such payments without satisfying the FHA requirement that the bank take distinct steps to work with the defaulting borrower in an attempt to mitigate loss.

ABLE’s litigation strategy relies on the [False Claims Act](#), or Lincoln Law, which allows private parties to file legal actions on behalf of the U.S. government against companies or other entities who defraud government programs. In this case, ABLE asserts that U.S. Bank received government payments on false grounds.

Significantly, the DOJ has formally declined to intervene and join ABLE’s legal action. This may present a setback for ABLE; however, it is possible that the DOJ may later join the case if it gains traction. According to the research of Professor David Freeman Engstrom of Stanford Law, about [ninety percent](#) of False Claims Act cases that the U.S. government never joins are dismissed.

The FHA guarantees about twelve percent of the country’s total mortgages, or nearly \$1.2 trillion worth of loans. The U.S. government is eager to encourage mortgage lending to individuals who may not easily qualify for loans absent this mortgage-backing program. Accordingly, some consumer advocates are concerned that the government, fearful of discouraging cautious lenders from participating in the program, may begin dropping legal actions against lenders or softening rules that hold them accountable.