

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

THOMAS SAXTON, IDA SAXTON,
BRADLEY PAYNTER,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE
AGENCY, in its capacity as Conservator of
the Federal National Mortgage Association
and the Federal Home Loan Mortgage
Corporation, MELVIN L. WATT, in his
official capacity as Director of the Federal
Housing Finance Agency, and THE
DEPARTMENT OF THE TREASURY,

Defendants.

Civil Action No. 1:15-cv-00047

**DEFENDANTS' MOTION TO REINSTATE STAY OF DEADLINE
TO FILE ADMINISTRATIVE RECORD**

The Federal Housing Finance Agency (“FHFA”), Melvin L. Watt, and the United States Department of the Treasury (“Treasury,” and collectively, “Defendants”) hereby move the Court to reinstate its prior order staying the deadline for Defendants to file an administrative record pending the Court’s resolution of Defendants’ motions to dismiss. As explained in the accompanying Brief, the Court should again defer any requirement for Defendants to file an administrative record until after the Court has ruled on Defendants’ forthcoming motions to dismiss the amended complaint.

DATE: February 29, 2016

Respectfully submitted,

/s/ Howard N. Cayne

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February 2016, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

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Defendants.

Civil Action No. 1:15-cv-00047

**DEFENDANTS' BRIEF IN SUPPORT OF THE MOTION TO REINSTATE STAY OF
DEADLINE TO FILE ADMINISTRATIVE RECORD**

The Federal Housing Finance Agency (“FHFA”), Melvin L. Watt, and the United States Department of the Treasury (“Treasury,” and collectively, “Defendants”) hereby move the Court to reinstate its prior order staying the deadline for Defendants to file an administrative record pending the Court’s resolution of Defendants’ motions to dismiss.¹

This Court previously ruled that “Defendants are not required to file an administrative record until after the Court has ruled on the pending motions to dismiss.” Doc. # 23 at 5. The Court reasoned it was appropriate to stay any requirement for Defendants to file an administrative record before the Court resolved the motions to dismiss because the Court “must

¹ Before filing the present motion, Counsel for Defendants requested that Plaintiffs consent to stay the deadline for Defendants to file an administrative record pending the Court’s resolution of the forthcoming motions to dismiss the amended complaint. Plaintiffs refused such consent.

assume the truth of the allegations set forth in the complaint” in considering the motions to dismiss, and because “both sides agree the issues raised in the motions to dismiss may be addressed without resort to the administrative record.” *Id.* at 4-5. [REDACTED]

[REDACTED] Then, this Court directed Defendants to file an administrative record by March 10, 2016, in light of Chief Judge Reade’s resolution of the motions to dismiss. Doc. # 62. Nevertheless, the same rationale supporting the Court’s original stay of the administrative record deadline applies equally today: Defendants soon will be filing motions to dismiss that once again raise threshold legal challenges, this time to Plaintiffs’ amended complaint. Thus, the Court should reinstate its prior stay of the deadline for the filing of an administrative record pending the Court’s resolution of Defendants’ motions to dismiss the amended complaint. In further support, Defendants state as follows:

1. Plaintiffs filed the complaint on May 28, 2015. Doc. # 1.
2. On August 26, 2015, Defendants filed a Motion to Stay Submission of a Proposed Scheduling Order Regarding the Filing of Administrative Records. Doc. # 18 (the “Motion to Stay”). In that motion, Defendants explained that their then-forthcoming motions to dismiss would raise threshold jurisdictional and other deficiencies that would require dismissal of the complaint, even assuming the truth of every fact alleged in the complaint. *See* Doc. # 18-1 at 3-7. Plaintiffs opposed the motion (Doc. # 21), and Defendants replied (Doc. # 22).
3. On September 4, 2015, Defendants moved to dismiss the complaint. Doc. ## 19, 20.

4. On October 2, 2015, the Court granted Defendants’ Motion to Stay, ordering that “Defendants are not required to file an administrative record until after the Court has ruled on the pending motions to dismiss.” Doc. # 23. The Court explained:

Having thoroughly reviewed the file and the authorities cited by counsel, I conclude the Court should first consider Defendants’ motions to dismiss. Both sides agree that in considering the motions to dismiss, the Court must assume the truth of the allegation set forth in the complaint. Furthermore, assuming the truth of the allegations in the complaint, both sides agree the issues raised in Defendants’ motion to dismiss may be addressed without resort to an administrative record. Accordingly, I find the requirement for filing an administrative record may be stayed pending the Court’s resolution of the motions to dismiss. If the motions to dismiss are denied, then the Court will set a deadline for filing the administrative record and, presumably, the parties will file motions for summary judgment.

Id. at 4-5. The Court also surveyed the approach of two other district courts—in *Perry Capital* and *Continental Western*—that addressed substantially similar actions challenging the Third Amendment, and recognized that both courts denied motions to compel the production of administrative records in advance of resolving Defendants’ motions to dismiss in those cases. *See id.* at 3 n.1 and 5 n.7. The Court also noted that the *Perry Capital* and *Continental Western* courts granted the motions to dismiss on threshold legal grounds. *See id.* at 3-4 and n.5.

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On the same day, the clerk docketed the Amended Complaint. Doc. # 61.

6. On February 10, 2016, the Court entered a one-page order directing Defendants to file an administrative record by March 10, 2016, in light of Chief Judge Reade’s order resolving the motions to dismiss the original complaint. Doc. # 62.

7. On February 18, 2016, the Court entered an order setting March 18, 2016, as the deadline for the filing of Defendants’ motions to dismiss the Amended Complaint. Doc. # 63.

8. The Court should reinstate its prior order staying the filing of an administrative record pending resolution of the motions to dismiss. The exact same rationale underlying this Court’s prior decision to stay the filing of any administrative records pending resolution of the motions to dismiss the *original* complaint supports a stay of the filing of any administrative records pending resolution of the motions to dismiss the *amended* complaint. Defendants soon will file motions to dismiss the amended complaint asserting substantially the same grounds as Defendants asserted in their motions to dismiss the original complaint—namely, that Plaintiffs’ claims are barred by 12 U.S.C. § 4617(f) and § 4617(b)(2)(a)(i), barred by the doctrine of issue preclusion, and fail for lack of ripeness. As this Court previously recognized, these issues are purely legal and “may be addressed without resort to an administrative record.” Doc. # 23.

[REDACTED]

[REDACTED]

[REDACTED]

9. Accordingly, Defendants respectfully request the Court enter an order reinstating its prior stay of the deadline to file an administrative record pending the Court's resolution of Defendants' motions to dismiss the amended complaint.

DATE: February 29, 2016

Respectfully submitted,

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ORDER

This matter comes before the Court on Defendants' Motion to Reinstate the Stay of the Deadline for the Filing of an Administrative Record. Upon consideration of the motion, it is hereby ORDERED that the motion is GRANTED. Defendants are not required to file an administrative record until after the Court has ruled on the motions to dismiss the amended complaint.

Dated: _____, 2016

United States Magistrate Judge