

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Nichole Williams, et al.

Plaintiffs.

Civil: 09-CV-1959 ADM/JJG
Hon. Ann D. Montgomery
Magistrate Judge Jeanne J. Graham

vs.

Timothy F. Geithner, et al.

Defendants.

SECOND AFFIDAVIT OF JANE N. BOWMAN

I, Jane N. Bowman, do hereby declare under penalty of perjury that the following is true and correct.

1. I am an attorney licensed to practice in the State of Minnesota and admitted to practice in the District of Minnesota. I am currently employed as a staff attorney at the Housing Preservation Project.

2. The Federal Rules of Evidence 1006 states:

[t]he contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

3. Pursuant to Fed. R. Evid. 1006, the following excerpts of applicable governing statutes, guidelines, and contracts are at issue in this matter. Most of the original documents have already been filed with the Court.

THE EMERGENCY ECONOMIC STABILITY ACT OF 2008, 12 U.S.C. § 5219

4. The purpose of the Emergency Economic Stability Act, 12 U.S.C. § 5201, is set forth in the Act as follows:

The purposes of this Act are--

- (1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and
- (2) to ensure that such authority and such facilities are used in a manner that--
 - (A) protects home values, college funds, retirement accounts, and life savings;
 - (B) preserves homeownership and promotes jobs and economic growth;
 - (C) maximizes overall returns to the taxpayers of the United States; and
 - (D) provides public accountability for the exercise of such authority.

5. The foreclosure mitigation efforts are outlined in the EESA, 12 U.S.C. § 5219, as follows:

(a) Residential Mortgage Loan Servicing Standards.--To the extent that the Secretary acquires mortgages, mortgage backed securities, and other assets secured by residential real estate, including multifamily housing, the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 257 of the National Housing Act or other available programs to minimize foreclosures. In addition, the Secretary may use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures.

...

(c) Consent to Reasonable Loan Modification Requests.--Upon any request arising under existing investment contracts, the Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitation on modifications.

6. 12 U.S.C. § 5220 outlines the assistance to homeowners:

(a) Definitions.--As used in this section--

(1) the term "Federal property manager" means--

(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(b) Homeowner Assistance by Agencies.--

(1) In general.--To the extent that the Federal property manager holds, owns, or controls mortgages, mortgage backed securities, and other assets secured by residential real estate, including multifamily housing, the Federal property manager shall implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 257 of the National Housing Act or other available programs to minimize foreclosures.

7. Section 119 of TARP, or 12 U.S.C. § 5229 is the judicial review section:

(1) Standard.--Actions by the Secretary pursuant to the authority of this Act shall be subject to chapter 7 of title 5, United States Code, including that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

(2) Limitations on equitable relief.--

(A) Injunction.--No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, other than to remedy a violation of the Constitution.

**MAKING HOME AFFORDABLE, SUPPLEMENTAL DIRECTIVE (09-01)
APRIL 6, 2009**

8. The Making Home Affordable Supplemental Directive 09-01 (April 6, 2009) are guidelines for HAMP participating servicers to apply to their non-GSE loans. The entire Directive is located on-line at https://www.hmpadmin.com/portal/docs/hamp_servicer/sd0901.pdf.

9. In the Making Home Affordable Supplemental Directive 09-01 (April 6, 2009), it states:

“If the NPV result for the modification scenario is greater than the NPV result for no modification, the result is deemed “positive” and the servicer **MUST** offer the modification. If the NPV result for no modification is greater than NPV result for the modification scenario, the modification result is deemed “negative” and the servicer has the option of performing the modification in its discretion.” Supplemental Directive 09-01, page 4 (emphasis original).

10. In the same directive, with regards to the standard modification waterfall, it states:

“Servicers must use the modification options listed below to begin the HAMP modification and work to complete the Hope for Homeowners refinance during the trial period. Servicers must apply the modification steps enumerated below in the stated order of succession until the borrower’s monthly mortgage payment ratio is reduced as close as possible to 31 percent, without going below 31 percent.” Supplemental Directive 09-01, page 8.

“Servicers must also have procedures and systems in place to be able to respond to inquiries and complaints about the HAMP. Servicers should ensure that such inquiries and complaint are provided fair consideration, and timely and appropriate responses and resolution.” *Id.* at 13.

“If the servicer concludes a current borrower is in danger of imminent default, the servicer must consider an HAMP application.” *Id.*

MAKING HOME AFFORDABLE FANNIE MAE AND FREDDIE MAC SUPPLEMENTAL DIRECTIVES

11. Fannie Mae issued HAMP guidelines on April 21, 2009 (reposted on May 15, 2009) under the name of Announcement 09-05R; Reissuance of the Introduction of the Home Affordable Modification Program, HomeSaver Forbearance[], and New Workout Hierarchy found at:

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2009/0905.pdf>.

12. The Fannie Mae guidelines state, in part:

“The HAMP implementation guidelines set forth in this Announcement apply to all eligible one- to four-unit owner-occupied properties securing Fannie Mae portfolio mortgage loans and MBS pool mortgage loans guaranteed by Fannie Mae.” Announcement 09-05R, page 1.

“All Fannie Mae-approved servicers must participate in the program for all eligible Fannie Mae portfolio mortgage loans and MBS pool mortgage loans guaranteed by Fannie Mae.” Announcement 09-05R, page 1.

13. Similarly, Freddie Mac issues HAMP guidelines in the format of a Bulletin as well as amending its Single-Family Seller/Servicer Guide to incorporate HAMP guidelines. The Bulletins can be found here:

http://www.freddiemac.com/singlefamily/service/mha_modification.html.

14. The Freddie Mac Bulletin dated March 11, 2009 (Number 2009-6) states,

“As announced on March 4, 2009, Servicers should suspend foreclosure sales on owner-occupied properties where the Borrower may be eligible for a modification under the Program.

For Mortgages eligible for the Program, the Servicer must not complete foreclosure sales until the Servicer has completed efforts to contact the Borrower and has determined that either (i) the Borrower is unresponsive or

(ii) the Borrower does not have the capacity or willingness to participate in the Program or any other Freddie Mac workout program.

For Mortgages that are ineligible for the Program, Servicers must determine on a case-by-case basis whether additional foreclosure relief should be extended to allow time for another alternative to foreclosure to be completed or whether the Servicer should proceed with the foreclosure sale. Servicers are not required to seek approval from Freddie Mac to proceed with foreclosure sales after March 6, 2009, if the Servicer has determined that a successful alternative to foreclosure is not possible.” Freddie Mac Bulletin Number 2009-6, page 4.

NET PRESENT VALUE (NPV) CALCULATOR OVERVIEW

11. The Home Affordable Modification Program Base Net Present Value (NPV) Model Specifications (updated June 11, 2009) are guidelines put out by the U.S. Treasury regarding NPV calculations. This document is located on-line at https://www.hmpadmin.com/portal/docs/hamp_servicer/npvoverview.pdf; it is also attached to Defendants Geithner and U.S. Treasury’s Memorandum in Opposition to Plaintiffs’ Motion for a Preliminary Injunction as Exhibit 4.

12. The Home Affordable Modification Program Base Net Present Value (NPV) Model Specifications states the following:

“It is our expectation that servicers may use the Base NPV Model Documentation to customize the model based on their individual portfolio experience---all within the standardized guidelines put forward for the model under the program.” HAMP Base Net Present Value (NPV) Model Specifications, page 1.

“A participating servicer in the Home Affordable Modification Program must modify any loan that meets the program’s eligibility criteria if the modification tests “positive” for NPV. When mortgage modifications have a positive NPV, it is in the best interests of lenders, servicers, investors, and borrowers to modify mortgages to reduce the risk of foreclosure.” *Id.*

“The Home Affordable Modification Program specifies a precise method for determining NPV and provides a base NPV model that any servicer can use or customize into a proprietary NPV model that satisfies all of the program’s methodological requirements.” *Id.*

“Under the program, a defined set of parameters for the base NPV model can be customized for each servicer. Every servicer is given discretion, within specified limits, to choose a discount rate.” *Id.*

“Servicers must reduce payments in the precise manner specified by the Making Home Affordable Program (the “Standard Waterfall”), starting with reducing the interest rate on the mortgage...Requiring servicers to modify all NPV-positive loans ensures that there is help for all distressed borrowers when an objective test demonstrates the modification will benefit both the borrower and the investor.” *Id.* at 2.

SERVICER PARTICIPATION AGREEMENTS

13. When a loan servicer agreed to participate in HAMP, the servicer and Fannie Mae entered into a Commitment to Purchase Financial Instrument and Servicer Participation Agreement. A draft agreement can be found here:

https://www.hmpadmin.com/portal/docs/hamp_servicer/servicerparticipationagreement.pdf.

A copy is also included as Defendants Fannie Mae and Freddie Mac’s Memorandum in Opposition of Plaintiffs’ Motion for a Preliminary Injunction Exhibit 3.

14. The Servicer Participation Agreement states:

“WHEREAS, the U.S. Department of the Treasury (the “Treasury”) has established a Making Home Affordable Program pursuant to section 101 and 109 of the Emergency Economic Stabilization Act of 2008 (the “Act”), as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009[.]” Servicer Participation Agreement, page 1.

“WHEREAS, all other servicers, as well as Fannie Mae and Freddie Mac approved servicers, that wish to participated in the Programs with respect to loans that are not GSE Loans (Collectively, “Participating Servicers”) must

agree to certain terms and conditions related to the respective roles and responsibilities of participants and other financial agents of the government;" Servicer Participation Agreement, page 1. *Id.*

"Servicer shall perform the Services for all mortgage loans it services, whether it services such mortgage loans for its own account or for the account of another party, including any holders of mortgage-backed securities." *Id.* at 2.

"Fannie Mae acknowledges that Servicer may service mortgage loans for its own account or for the account of one or more Investors and may be subject to restrictions set forth in pooling and servicing agreements or other servicing contracts governing Servicer's servicing of a mortgage loan; Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority, and use reasonable efforts to obtain all third party consents, waivers and delegations that are required, by contract or law, in order to perform the Services." *Id.* at 2-3.

FURTHER YOUR AFFIANT SAITH NOT

Dated: September 25, 2009

Jane N. Bowman
Jane N. Bowman

State of Minnesota
County of Ramsey

Subscribed and sworn to before me
This 25th day of September 2009.

Marit Eriksen
Notary Public

