

RELEASE THE HOSTAGES

The American public deserves to know the full circumstances behind the government's 2008 seizure of Fannie Mae and Freddie Mac.

Was the President misled?

A new court filing reveals more government misconduct . . . while Treasury continues to hide behind a now-obsolete gag order.

On the morning of Thursday, September 4, 2008, Secretary of the Treasury **Henry Paulson** walked into the Oval Office to brief President **George W. Bush** on his plan to seize control of **Fannie Mae** and **Freddie Mac** over the upcoming weekend. "Do they know it's coming, Hank?", Bush asked. Paulson responded: "Mr. President, we're going to move quickly and take them by surprise. The first sound they'll hear is their heads hitting the floor."¹

Bush – a subscriber to longtime Republican Party orthodoxy that President **Franklin D. Roosevelt's** 1938 decision to establish Fannie Mae was a mistake in the first place – gave his blessing. But he had one important caveat. As Paulson was exiting, Bush added "we have to make clear that what we are doing now is transitory, because otherwise it looks like nationalization."² Nationalization, of course, is something done in communist countries and banana republics. It is directly counter to another

bedrock GOP principle: respect for private property rights.

Although he may not have told the President in so many words, nationalization appears to have been exactly what Paulson had in mind. A decade later, on September 24, 2018, he would seem to confirm as much in an exclusive interview with **Maria Bartiromo** of **Fox Business News** in which he repeatedly used the word quite unashamedly. Indeed, the terms of the supposedly lifesaving 'bailout' which he forced upon them were more akin to a concrete life preserver. It saddled them with a 10 percent annual dividend obligation (twice what **AIG**, **Citi**, and the banks were charged under the **TARP** program) – *in perpetuity*, no less – and prohibited them from ever repaying the government's underlying 'loan' by so much as a penny.³ Like the restaurant owner who accepted money from the Mob, they would be in hock for the rest of their lives. And now a new court filing raises more questions.

¹ He would later describe it as an "ambush". Henry M. Paulson Jr: *On the Brink* © 2010 Hachette Book Group, excerpted at <http://abcnews.go.com/GMA/Books/book-excerpt-brink-henry-paulson-jr/story?id=9713451>.

² Ibid.

³ When you think about it, it was a deal right out of *Investment Banking 101*. Because the government was running continual budget deficits, it had to borrow the money in the bond market (at around three percent) in order to re-lend it to Fannie and Freddie (at 10 percent), pocketing the spread.

Recall that when the first lawsuits were filed in 2009 challenging the seizures, the **Justice Department** (“DOJ”) convinced a judge to place over 11,000 pertinent documents under seal. Releasing them to the public, it argued, would threaten national security and could cause another financial crisis. Most judges being given such an ominous warning usually defer to the government’s wishes, as did initially **Margaret Sweeney** of the **U.S. Court of Federal Claims**. But after a long and protracted fight by attorneys for angry shareholders, in 2015 she agreed to lift the seal on a representative sample of 56 documents. Still, the government fought her tooth-and-nail, even going to the Court of Appeals in an attempt to have her decision reversed. (They lost on 48 of the 56.) After personally reviewing the documents, Sweeney opined that the only harm she could see in making them public was *“harm to the reputations of government officials”* . . . warning that her earlier order sealing them should not be used *“to insulate public officials from criticism in the way they execute their public duties.”*

Now even more emails and documents have come to light in an amended complaint filed earlier this month by **Washington Federal** and the **City of Austin Police Retirement System**, both long-time Fannie and Freddie shareholders. It includes [new references to documents which remain under seal](#), so major portions of the filing are redacted. But read in the context of what immediately precedes and what immediately follows the blacked-out portions, one doesn’t have to be a rocket scientist to figure out that whatever they’re hiding is probably not good for the government’s case.

Which begs the question: why should any of the 11,000 documents be under seal? There is no ‘national security’ issue here and it’s highly unlikely that after a decade, there’s anything in them which could trigger another major financial crisis. Whatever happened to “the public’s right to know”?

For instance, there is the question of why the companies didn’t put up a fight. Under the **Housing and Economic Recovery Act** (“HERA” – signed into law just weeks before the seizures), there were 11

specific conditions under which their regulator, the **Federal Housing Finance Agency** (“FHFA”), was authorized to seize Fannie and/or Freddie. *Not one was met*. Oh, but wait . . . it turns out there was a 12th condition: they could be put into conservatorship if their boards of directors “acquiesced” or “consented”. Which did Paulson obtain (there is a difference) . . . and how did he do it? The paragraphs in the complaint describing the run-up to the hastily-called special board meetings and the September 6, 2008 meetings themselves are . . . you guessed it . . . redacted. Why shouldn’t the public be allowed to know what transpired? Why shouldn’t future policymakers be allowed to know? Why shouldn’t the financial services community have the benefit of knowing how two of their brethren – whose regulator, just two weeks earlier, had confirmed that they were in full capital compliance – were forced to turn over the keys to their institutions? ⁴ After all, precedent has now been set and the same can be done to any bank in America come the next financial crisis or, worse, at any time between now and then when the government decides that, for whatever reason, it wants to. What is hidden behind those redactions?

In the meantime, despite consistently earning about \$30 *billion* a year between them, Fannie and Freddie remain wards of the state, in a conservatorship which was forced upon them under false pretenses. Indeed, *Washington Federal* alleges that the real reason Paulson wanted to get his hands on Fannie and Freddie was this:

“faced with evaporating liquidity in the mortgage market due to the unprecedented levels of toxic mortgages and mortgage-backed securities owned by banks . . . which threatened to keep (them) from making new loans . . . the Government made the decision to enable banks to clean up their balance sheets and resume making new loans by dumping their toxic mortgages and securities on Fannie Mae and Freddie Mac.” (Emphasis added.)

Until we see Washington Federal’s evidence, however, we must reserve judgement.

Whatever the reasons for the seizures, Fannie Mae and Freddie Mac have become the best ‘investment’ Uncle Sam has made since the **Louisiana**

⁴ In what was obviously a clear (and cynical) act of premeditation, Paulson’s Treasury – which drafted HERA – inserted a provision in the new

law insulating the directors from shareholder lawsuits if they would agree to stand aside while the government took them over.

Purchase. By the end of this year, it is estimated they will have paid the government *\$100 billion* more than the *\$187 billion* it 'loaned' them. Even without the benefit of reading what's behind the redactions, however, it's clear from the Washington Federal complaint that the storyline which Paulson and former FHFA director **James B. Lockhart III** continue to promote to this day – i.e., that Fannie and Freddie were in desperate straits and required a government bailout – is demonstrably false. And as for the equally shopworn lie that they had lost access to the capital markets? Just three days prior to their seizure, Fannie and Freddie raised *\$6 billion* of unsecured debt in an oversubscribed offering which was underwritten by a *Who's Who* of Wall Street investment banks and

which carried ratings of AA+ and AAA-. As you have heard me say many times before, *it wasn't a bailout, it was a stick-up.*

Mr. President, it's time to return these companies to their shareholders – and give the press and public access to those 11,000 documents. As **Justice Brandeis** once wrote, *"sunlight is the best disinfectant."*

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See also:

HINDESight™ Sept. 4, 2018: [Ten Years After Henry Paulson's Colossal Blunder](#)

HINDESight™ Sept. 6, 2017: [The Case of the Concrete Life Preserver](#)

HINDESight™ Aug. 25, 2017: [Fanniegate: The Cover-up Unravels](#)

HINDESight™ Sept. 6, 2016: [The Myth of Private Gains and Public Losses](#)

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