

## Judge Rules in Favor of Fannie and Freddie Investors in Government Battle

By Alisha Mahalingam, J.D. Candidate 2018 | October 24, 2016

On October 3 2016, Fannie Mae and Freddie Mac investors received good news in their suit against the United States over its seizing of company profits. After reviewing 56 documents that had been deemed privileged by the government, Federal Claims Court Judge Margaret M. Sweeney ruled that the government had improperly withheld 52 of the documents and [ordered their release](#). This is a breakthrough for plaintiffs in what has been an unusually secretive case, shrouded by sealed depositions and claims of presidential privilege.

The suit originates from the 2008 bailout of the two mortgage finance titans. Under the original terms of the Housing and Economic Recovery Act, Fannie Mae and Freddie Mac were required to pay a 10% dividend on all Treasury payouts they received. However, in 2012, the Obama administration [changed the terms of the bailout agreement](#), sweeping all profits gained by both companies into the Treasury fund. These profits exceed the amount of bailout money received by both companies by over \$50 billion. The administration justified the profit-seizing decision, citing the current dire financial situation of Fannie and Freddie and the need to protect taxpayers.

However, investors in Fannie and Freddie [paint a different picture](#), questioning the validity of the government's reasoning. Susan McFarland, the former chief financial officer of Fannie, alleged that the profit sweeping was the result of "a desire not to allow capital to build up within the enterprises and not to allow the enterprises to recapitalize themselves." In her deposition, McFarland states that in August 2012 she met with Treasury officials to present Fannie's financial outlook. The company explained that they were independently profit sustaining and would be able to earn \$50 billion due to changes in accounting rules regarding deferred tax assets. A week later, the government announced its new bailout terms.

In support of the government's position, Mario Ugoletti, a former official at the Federal Housing Finance Agency (FHFA), claimed that at the time of the decision the FHFA did not factor in the \$50 billion in projected profits, as they did not envision the change in accounting rules would come to fruition. Investors find this reasoning dubitable, particularly in light of internal documents referring to an administration commitment to ensuring that shareholders would not benefit from any of potential positive earnings by Fannie and Freddie.

Stuck in a tangle of contradicting claims, the Fannie and Freddie's investors have sought out additional government documents hoping that they reveal what they believe to be the government's real intentions. With Judge Sweeney ordering the release of many of the most guarded documents, investors may have their answer soon.