



# THE AMERICAN SPECTATOR

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## Mnuchin Must Bring Transparency to Fannie Mae and Freddie Mac

*The secretive “Fanniegate” arrangement from the Obama-Geithner days needs full exposure.*

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Now that he has been confirmed, Treasury Secretary Steven Mnuchin has a lot on his plate. He needs to do what he can administratively to reduce the crushing burden of the Dodd-Frank Act on small banks and credit unions. He also needs to work with Congress on major legislative fixes such as the forthcoming Financial Choice Act from House Financial Services Committee Chairman Jeb Hensarling (R-TX), a restructuring of the convoluted housing finance system, and comprehensive tax reform.

But first, Mnuchin must do everything he can to reverse the extreme secrecy practiced by the Obama Treasury Department. The Obama administration has been judged by a major news service as the least transparent of modern presidencies, and much of the source of this secrecy — for whatever reason — was in housing and finance policy.

A 2015 analysis by the Associated Press found that “the Obama administration set a record again for censoring government files or outright denying access to them last year under the U.S. Freedom of Information Act.” The AP added that the administration “also acknowledged in nearly 1 in 3 cases that its initial decisions to withhold or censor records were improper under the law — but only when it was challenged.”

But Freedom of Information Act requests were just the tip of the iceberg for the Obama administration’s secrecy, much of which had nothing to do with the legitimate exception of national security. Under Dodd-Frank, the administration set up the Consumer Financial Protection Bureau (CFPB) and the Financial Stability Oversight Council (FSOC) to be exempt from many open meetings and (especially with FSOC) open records requests.

In 2015, thanks to constant pushing by CEI and Rep. Sean Duffy (R-WI), Congress finally made the CFPB subject to the Federal Advisory Committee Act that requires open meetings. Congress should now do the same for FSOC. And since Mnuchin is chairman of FSOC as Treasury

Secretary, he should move immediately to open up its meetings and — with minor exceptions such as discussions of trade secrets of private firms — make its records available to the public.

But probably the most egregious example of Obama-era secrecy concerns the management of the government-sponsored housing enterprises (GSEs) Fannie Mae and Freddie Mac. As important as the role Fannie and Freddie play in the housing market, it is hard for anyone to argue that their actions somehow affect national security.

Yet when asked to produce documents in litigation by Fannie and Freddie's shareholders, the Obama administration made the unbelievable claim of "executive privilege." According to *New York Times* financial columnist Gretchen Morgenson, "the government has invoked presidential privilege on 45 documents created either by officials at the Treasury or the FHFA, the regulator charged with conserving Fannie and Freddie's assets."

Fannie and Freddie were chartered by Congress around 45 years ago as companies with private shareholders but lines of credit with the government. In September 2008, the Bush administration found that Fannie and Freddie were on the brink of failing. Under new powers from the Housing and Economic Recovery Act (HERA) passed two months earlier, it took them into a "conservatorship" in which the government took 79.9 percent of the entities' stock in exchange for bailing them out, a "conservatorship" that continued into the Obama administration and to this day.

The series of actions now being called "Fanniegate" began in August 2012, when then-Treasury Secretary Tim Geithner issued the "Third Amendment" to the GSE conservatorship. The Third Amendment, with no authorization from the HERA law, required all of the GSEs' profits to be siphoned off to the U.S. Treasury Department in perpetuity — even after the GSEs paid back what they owed to taxpayers.

This arbitrary action has spawned more than 20 lawsuits from Fannie and Freddie's private shareholders. The suits charge the government with everything from violating the Administrative Procedures Act to unconstitutionally taking property without just compensation.

The Third Amendment has also raised concerns that the profit sweep is leaving Fannie and Freddie with very little capital reserves, furthering the chance for more taxpayer bailouts should something go awry with the housing market again. See, on this point, [this excellent paper](#) coauthored by then- Cato Institute Director of Financial Regulation Studies Mark Calabria, who just became chief economist for Vice President Mike Pence.

But the really amazing thing is that we know very little about what prompted Obama and Geithner to pursue this highly controversial policy, because according to the *Times*' Morgenson, the Obama administration "fought every discovery request made by the Fannie and Freddie shareholders."

Recently, one of these shareholder lawsuits — *Fairholme v. United States* — prompted Judge Margaret Sweeney to compel the government to produce some of these documents in order to satisfy a discovery request from the mutual fund plaintiff. Last month, the U.S. Court of Appeals for the Federal Circuit panel [largely upheld](#) Sweeney's decision.

Mnuchin should immediately reverse the Obama administration's secrecy and release these papers not only to the plaintiffs, but to the American public. Then, the Justice Department and Congress must conduct a full investigation of Fanniegate.