

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	No. 13-465C
)	(Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S OPPOSITION TO THE APPLICATION OF TIMOTHY HOWARD FOR ACCESS TO PROTECTED INFORMATION

Pursuant to paragraph 7 of the Protective Order in this case, the United States respectfully requests that the Court deny the application of Timothy Howard for access to protected information. Mr. Howard is a former employee of the Federal National Mortgage Association (Fannie Mae, along with Freddie Mac, the Enterprises) who believes that the Government is responsible for the loss of his career and reputation. He has expressed a desire to play a part in public discourse regarding mortgage finance policy. Mr. Howard also holds common and preferred stock in Fannie Mae. For these reasons, there is significant risk that Mr. Howard may – knowingly or inadvertently – use protected information in a manner inconsistent with the obligations in the Protective Order. Accordingly, it is not appropriate to grant Mr. Howard access to confidential and sensitive information in this case.

Mr. Howard was vice chairman and chief financial officer at Fannie Mae until 2004, when he resigned in the face of allegations of financial improprieties and ongoing investigations into Fannie Mae’s accounting practices. See <http://www.washingtonpost.com/wp-dyn/articles/A17241-2004Dec21.html> (Ex. A). In 2006, the Office of Federal Housing and Enterprise Oversight (OFHEO, the predecessor to the Federal Housing Finance Agency, or

FHFA) charged him and two other senior Fannie Mae executives with, among other things, earnings mismanagement, failure to ensure adequate internal controls, and the release of misleading financial reports. See <http://www.fhfa.gov/Media/PublicAffairs/Pages/OFHEO-Files-Notice-of-Charges-Against-Former-Fannie-Mae-Executive-Franklin-Rains,-Timothy-Howard-and-Leanne-Spencer.aspx> (Ex. B). In 2008, the charges against him and the other executives were settled pursuant to consent orders in which the executives agreed to pay more than \$31 million. See <http://www.reuters.com/article/2008/04/18/fanniema-executives-settlement-idUSN1847607420080418> (Ex. C). Mr. Howard is currently still unemployed.

In late 2013, Mr. Howard authored a book titled *The Mortgage Wars, Inside Fannie Mae, Big-Money Politics, and the Collapse of the American Dream*, in which he offers his take on the demise of Fannie Mae and the collapse of the United States home mortgage market.

Significantly, Mr. Howard makes clear in his book that he believes he is the victim of the Government's overregulation of the Enterprises and that the 2006 charges against him were unfounded. See *id.* at 223-25 (in speeches and interviews he has called the charges against him "invented.").

Mr. Howard has stated publicly that he desires "to be part of the debate over the future of Fannie Mae and its counterpart, Freddie Mac," and that he sees his book as part of that initiative.

See <http://www.usatoday.com/story/money/business/2014/01/27/former-fannie-mae-cfo-mortgage-wars/4773547/> (Ex. D) ("I want to re-insert myself into the public discussion . . .").

In other words, Mr. Howard wishes not only to restore his reputation, but to play a public role in the future of the Enterprises.

There is significant reason to be concerned about potential violations of the Protective Order. Mr. Howard's statements demonstrate that he believes that he lost his career and

reputation because of the Government's regulation of the Enterprises. His deeply-held beliefs may color not only his view of confidential documents in this case, but also his willingness and ability to abide by the terms of the Protective Order both during and after the conclusion of litigation. *See Shell Petroleum, Inc. v. United States*, No. 97-945, 2001 WL 36142015 at *5 n.7 (Fed. Cir. 2001) (identifying lack of trustworthiness and the inability to follow the protective order as two bases to object to access under the protective order). Permitting Mr. Howard access to protected information unnecessarily places the confidentiality of that information at risk. *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1469 (Fed. Cir. 1984). Stated differently, the Government should not be subjected to the additional risk of providing its confidential and sensitive information to purported experts and consultants with such a long-standing and personal interest in the litigation. Even if he were not to intentionally misuse the information, Mr. Howard intends to continue to be involved in public discussions about mortgage finance and, as a result, could inadvertently disclose protected information.

In addition, counsel for Fairholme has confirmed that Mr. Howard owns common and preferred shares in Fannie Mae. Thus, Mr. Howard has a personal financial stake in the outcome of this litigation. A shareholder with those interests has an incentive to release confidential information to increase the price of his shares. The opportunity for financial gain is a fact that must be considered by the Court in considering the level of risk that would be presented by granting the application of any expert or consultant for access to confidential and sensitive information. *Standard Space Platforms Corp. v. United States*, 35 Fed. Cl. 505, 509 (1996)

(central question is whether there is “any greater risk” that the expert/consultant would misuse confidential information as compared to other experts).¹

We have previously identified the Government’s need to protect certain sensitive information from inadvertent or intentional disclosure, *see* Def’s Mot. for Prot. Order at 10-16 (Doc. 49), and it is appropriate for the Court to give great weight and careful consideration to these concerns here. Mr. Howard’s past relationship with Fannie Mae, his subsequent public statements, and the nature of the Government’s documents in this case weigh heavily against granting Mr. Howard access to these documents. We respectfully request that the Court consider our reasonable concerns that interested persons such as Mr. Howard should not be allowed access to confidential and sensitive information that the Court has compelled the Government to disclose.

Finally, plaintiffs will not be prejudiced if the Court denies Mr. Howard access to protected information. In fact, Mr. Howard’s utility as a consultant may be limited given that the documents in this case are from 2008 and beyond, but his employment with Fannie Mae was terminated in 2004. Plaintiffs are free to employ – and have employed – other financial consultants to assist in review of the protected documents produced by the Government and the Enterprises in this case. And, of course, plaintiffs are free to consult with Mr. Howard as to all matters not contained in protected documents and to take advantage of his recollection of events at Fannie Mae to the extent these events are relevant. Plaintiffs cannot seriously contend that their ability to understand the documents or to respond to the Government’s motion to dismiss will be harmed by denying Mr. Howard’s application. Therefore, the potential harm to the

¹ Plaintiffs will respond that Mr. Howard has volunteered not to trade in Fannie Mae/Freddie Mac securities during the pendency of the litigation. This does not resolve the problem. Not only is Mr. Howard’s offer not legally binding, but he still stands to benefit from any increase in share price after the litigation.

Government from inadvertent or advertent disclosure of its protected information clearly outweighs any hardship on plaintiffs by restricting Mr. Howard's access to protected information. *Phoenix Solutions, Inc. v. Wells Fargo Bank, N.A.*, 254 F.R.D. 568, 581 (N.D. Cal. 2008).

For these reasons, the United States respectfully requests that the Court deny Mr. Howard's application for access to protected information under the Protective Order in this case.

Respectfully submitted,

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September 11, 2014

Exhibit

A

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Fannie Mae's Top Executives Leaving Firm

Raines, Howard Out Under Pressure

By David S. Hilzenrath
Washington Post Staff Writer
Wednesday, December 22, 2004; Page A01

Franklin D. Raines stepped down yesterday as chairman and chief executive of Fannie Mae, as the company's directors ended days of tense and emotional deliberations and bowed to pressure from regulators who wanted him out.

J. Timothy Howard, the company's longtime chief financial officer, also is leaving. Raines's departure was structured as an early retirement. Howard resigned.

The departures come less than a week after the Securities and Exchange Commission directed the giant mortgage-funding company to make accounting corrections that could erase \$9 billion of past profit.

The District-based housing finance company, which stands behind or owns a quarter of the nation's mortgages, faces a criminal investigation by the Justice Department; a civil investigation by the Securities and Exchange Commission; an ongoing probe of other accounting issues by its main regulator, the Office of Federal Housing Enterprise Oversight; and class-action lawsuits by investors. In addition, Fannie's board has hired outside lawyers to investigate the regulators' allegations.

The government-sponsored company has been on the defensive since September, when OFHEO alleged that



Franklin D. Raines promised earnings growth when he became Fannie's CEO. (Chris Kleponis -- Bloomberg News)

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Fannie had systematically manipulated accounting estimates, ignored accounting requirements it had lobbied unsuccessfully against and operated with weak internal controls that helped obscure the other problems. The report said Fannie Mae delayed booking \$200 million of expenses in 1998, which allowed Raines and other top executives to receive millions of dollars in bonuses linked to Fannie's profit.

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A source with knowledge of the board's recent deliberations described a sometimes painful debate. Raines, the source said, at times argued passionately that he had done nothing wrong.

Raines, 55, is one of the most prominent African Americans in corporate America. He rose from a family that supplemented work with welfare to become a Rhodes scholar, president of the Harvard University Board of Overseers, director of the Office of Management and Budget under President Bill Clinton and a leader of the Washington business community. His compensation last year, including \$3 million in stock options, totaled about \$20 million.

Fannie's federal regulator, however, demanded management changes, holding Raines responsible for a corporate culture that emphasized stable earnings at the expense of accurate financial disclosures. Sources said the regulator was determined to initiate a public proceeding to remove Raines if the board did not act.

The costs of an all-out fight with a federal regulator would be too great, Fannie's board ultimately concluded, so Raines was told he would have to go.

The board had decided by Monday evening to accept Howard's resignation. But its announcement was held up as directors continued to discuss different scenarios in which Raines would remain chief executive, including the appointment of an independent chairman.

In a statement, Raines said: "I previously stated that I would hold myself accountable if the SEC determined that significant mistakes were made in the Company's accounting. Although, to my knowledge, the Company has always made good faith efforts to get its accounting right, the SEC has determined that mistakes were made. By my early retirement, I have held myself accountable."

Ann McLaughlin Korologos, the presiding non-management director, thanked Raines and Howard for their "many contributions" and said the board "takes these steps today to move the company forward." The company also announced that the board's audit committee has dismissed KPMG LLP, the outside accounting firm that audited the financial statements Fannie will now correct.

Armando Falcon Jr., head of OFHEO, commended the board's action and said, "We are encouraged that the Board's announcement signals a new culture and a new direction for Fannie Mae."

OFHEO must still officially review the terms of departure for Raines and Howard. The agency last night declared

Fannie Mae "significantly undercapitalized," a determination that gives the regulator additional powers over the company.

The 10-year-old agency has been testing its powers since the accounting scandal last year at its smaller rival, McLean-based Freddie Mac, when that company tried to let longtime chief executive Leland C. Brendsel retire with more than \$50 million in compensation.

The regulator challenged that decision and has been in a court fight with Brendsel. A federal judge ruled in August that the agency was "simply overreaching" when it ordered most of Brendsel's payments withheld.

Fannie Mae announced several other changes. Board member Stephen B. Ashley, a former president of the Mortgage Bankers Association of America, will become non-executive chairman. Daniel H. Mudd, the company's vice chairman and chief operating officer, will serve as interim chief executive. And Robert J. Levin, executive vice president, will serve as interim chief financial officer while the company seeks permanent replacements.

Though it was not apparent at the time, Raines's downfall began in early 2003, when Freddie Mac disclosed that it had made billions of dollars in accounting errors. Ensuing investigations revealed that Freddie Mac executives had gone to elaborate lengths to make its earnings growth appear smooth.

Given the similar nature of the two companies, OFHEO decided to take a closer look at Fannie Mae's accounting. As that review got underway, Raines complained that Fannie was being unfairly tainted by its competitor's troubles, and he denied that Fannie had similar problems.

In its September report, OFHEO alleged that since a key accounting rule took effect in 2001, Fannie improperly excluded from earnings changes in the value of derivatives, complex financial instruments that can be used to speculate for profit or hedge against risk. Freddie Mac violated the same rule.

Howard, 56, who joined Fannie Mae in 1982 and had served as chief financial officer since 1990, oversaw Fannie's accounting.

At a congressional hearing in October, Raines pointed to the SEC as the authority on accounting matters and pinned his hopes on a favorable decision from the agency. Last week, the SEC's top accountant sided with OFHEO on questions of accounting policy, saying that instead of following the requirements, "Fannie Mae internally developed its own unique methodology."

On Capitol Hill, the scandal at Fannie Mae has reinvigorated efforts to create a more powerful regulator for Fannie and Freddie. Members of Congress and the Bush administration generally agree that the companies' primary regulator, OFHEO, is ill-equipped to oversee huge, complex institutions that could send shock waves through the economy and financial system if they ever foundered.

Fannie Mae, for example, has debts to bondholders of \$957 billion, equal to about a fifth of the publicly held portion of

the U.S. national debt. In addition, the company guarantees principal and interest payments on \$1.9 trillion of mortgage-backed securities.

Raines's successor must add billions of dollars to Fannie's reserves, which will be below the company's regulatory minimum when it records the additional losses.

Established in the 1930s as the nation was emerging from the Great Depression, Fannie borrows money by issuing bonds and uses that money to buy mortgages from lenders, thereby giving the lenders cash to issue more loans. Fannie also packages mortgages into securities, attaching the company's guarantee that it will pay investors the principal and interest on the loans if the borrowers default.

Some corporate governance specialists were stunned by allegations that Fannie engaged in accounting manipulations years after the watershed scandals at Enron Corp. and WorldCom Inc. Those debacles inspired tough new legal penalties for accounting manipulations, served a warning to corporate bosses and seemed to bring about a change in the culture of America's boardrooms.

In the aftermath of Enron's collapse, Raines became a spokesman for the cause of good corporate governance. On behalf of the Business Roundtable, a group of chief executives of many of the nation's largest corporations, Raines led a task force that prescribed best practices for corporate leaders, and he publicly criticized executives who disclaimed responsibility for wrongdoing within their organizations.

Raines and Fannie Mae "have been so arrogant, not just to shareholders but so arrogant in Washington, that it's kind of a well-deserved comeuppance," said Sarah Teslik, former head of the Council of Institutional Investors.

But Arne Christenson, a former Fannie Mae executive who was before that a top aide to then-Speaker of the House Newt Gingrich, said Raines will be difficult to replace. "The thing about Frank is, he had a blend of business acumen and political savvy that was uniquely helpful to Fannie Mae," Christensen said.

"I'm sure he [Raines] would have preferred to have stayed, but things are the way they are," said attorney R. Timothy Columbus, a friend of Raines. "He did what he had to do."

Staff writers Jeffrey Birnbaum, Kathleen Day and Terence O'Hara contributed to this report.

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Exhibit B



News Release

OFHEO Files Notice of Charges Against Former Fannie Mae Executive Franklin Rains, Timothy Howard and Leanne Spencer

FOR IMMEDIATE RELEASE

12/18/2006

Washington, D.C. – The Office of Federal Housing Enterprise Oversight (OFHEO) has filed a Notice of Charges against three former Fannie Mae executives, former Chairman and CEO Franklin D. Raines, former Vice Chairman and Chief Financial Officer J. Timothy Howard, and former Senior Vice President and Controller Leanne G. Spencer. OFHEO's Office of General Counsel continues its review of the conduct of other Fannie Mae personnel mentioned in OFHEO's Special Examination.

OFHEO Director James B. Lockhart determined that the Notice of Charges was appropriate based on the findings of the special examination of Fannie Mae conducted in 2004-2006 and additional review by OFHEO's Office of the General Counsel and the Office of Compliance.

"The Notice of Charges details the harm to Fannie Mae resulting from the conduct of these individuals from 1998 to 2004," said Director Lockhart. "The 101 charges reveal how the individuals improperly manipulated earnings to maximize their bonuses, while knowingly neglecting accounting systems and internal controls, misapplying over twenty accounting principles and misleading the regulator and the public. The Notice explains how they submitted six years of misleading and inaccurate accounting statements and inaccurate capital reports that enabled them to grow Fannie Mae in an unsafe and unsound manner. The misconduct cost the Enterprise and shareholders many billions of dollars and damaged the public trust," Lockhart said.

The Notice of Charges alleges the "violations and conduct (a) resulted from a pattern of malfeasance, misfeasance, nonfeasance and misconduct; (b) involved recklessness; (c) was knowing and intentional conduct; and (d) resulted in unjust enrichment." The matter will be referred to an Administrative Law Judge (ALJ). Remedies sought include civil money penalties that could exceed \$100 million, disgorgement of bonuses totaling over \$115 million, loss of indemnification, and debarment from participating in Enterprise affairs.

The following is a summary of the Notice of Charges by OFHEO's Office of General Counsel:

Summary of Notice of Charges

I. Charges

The Notice of Charges alleges that Mr. Raines, Mr. Howard and Ms. Spencer knowingly and/or recklessly engaged in misconduct and safety and soundness violations that caused substantial and/or material harm and loss to the Enterprise. Such harm was the result of a pattern of misconduct, encompassing both the individual and collective action of these individuals. They operated Fannie Mae in an unsafe and unsound manner, facilitating excessive growth and unjustified bonuses.

Specific violations and areas of misconduct include—

Inappropriate earnings management and manipulation;

Deliberately misleading financial reporting and disclosures;

Failure to establish a sound internal controls process, resulting in defective accounting policies and practices, conflicts of interest, incompetent personnel, key person dependencies and failure to segregate duties;

Misleading and deficient reporting from the important Internal Audit function; and,

Permitting known deficient systems to continue to operate while recognizing that such systems facilitated the ongoing manipulations sought by the individuals charged.

The Notice of Charges makes 101 claims for relief for specific violations of law and regulation for conduct and misconduct recounted in the Notice. These detail the specific actions in individual charges, such as individually and collectively causing inaccurate and misleading disclosures regarding GAAP compliance.

Of the charges filed, 79 include Mr. Raines, 89 include Mr. Howard and 73 include Ms. Spencer.

II. Remedies Sought

OFHEO seeks the imposition of civil money penalties, to be determined in the course of the administrative law proceeding. OFHEO would propose such financial penalties in light of the multi-billion dollar harm caused to the Enterprises. Such penalties, which could total in excess of \$100 million are assessed employing calculations provided under OFHEO's enforcement regulations. For example, five years of misconduct could be assessed as Tier 3 knowing violations at a rate of \$100,000 a day.

OFHEO also seeks cease and desist orders which would require the restitution of monies Fannie Mae paid these individuals, reimbursement of monies paid by Fannie Mae to remedy the consequences of the conduct alleged in the Notice of Charges and the return to Fannie Mae of amounts advanced for legal fees under indemnification agreements. The cease and desist orders also would bar participation by these individuals in the business of Fannie Mae or Freddie Mac and require disclosure of orders issued in this matter prior to the individuals being employed or otherwise engaged by a regulated financial institution (such as a bank, savings and loan, credit union) to such institution and its regulator.

OFHEO also asks for Mr. Raines, Mr. Howard and Ms. Spencer to remit monies by which they were unjustly enriched under annual and long-term incentive plans and challenge grants during the period 1998-2003. The table below highlights some of the benefits that would be considered for the named individuals; the totals, excluding salaries, could be in excess of \$115 million. OFHEO's request includes future payments, if any, under Fannie Mae's long-term incentive plan.

**Compensation of Franklin Raines, Timothy Howard and Leanne Spencer,
 including Salary, Bonus, Performance Share Plan (PSP) Payouts, Stock Options,
 and Earnings per Share (EPS) Challenge Grant Awards
 1998-2003a**

	1998	1999	2000	2001	2002	2003	2004d	Totals
Franklin Raines								
Salary	\$526,154	\$945,000	\$992,250	\$992,250	\$992,250	\$992,250	\$992,250d	\$6,532,404
Bonusb	1,109,589	1,890,000	2,480,625	3,125,650	3,300,000	4,180,365		\$16,086,229
PSPb	794,873	1,329,448	4,588,616	6,803,068	7,233,679	11,621,280		\$32,270,964
Options	4,052,484	4,358,406	5,829,071	7,945,648	6,680,395	3,006,895		\$31,872,899
EPS Grantsb,c						4,358,515		\$4,358,515
Total	\$6,483,100	\$8,522,854	\$13,890,562	\$18,866,616	\$18,206,324	\$24,159,305	\$992,250d	\$91,121,011
Timothy Howard								
Salary	\$395,000	\$414,800	\$435,540	\$463,315	\$498,614	\$645,865	\$703,350d	\$3,556,504
Bonusb	493,750	518,500	544,425	694,983	781,250	1,176,145		\$4,209,053
PSPb	909,196	860,464	2,088,542	1,987,119	1,947,368	3,470,578		

								\$11,263,267
Options	938,912	1,154,593	2,035,589	2,166,427	1,749,995	2,491,974		\$10,537,490
EPS Grant						1,292,085		\$1,292,085
Total	\$2,736,858	\$2,948,357	\$5,104,096	\$5,311,844	\$4,977,227	\$9,046,647	\$703,350d	\$30,858,379
Leanne Spencer								
Salary	\$159,000	\$195,000	\$205,000	\$216,000	\$260,000	\$275,210	\$361,000d	\$1,671,210
Bonus ^b	85,518	120,500	178,863	185,000	330,000	383,200		\$1,283,081
PSP ^b	184,802	240,223	319,805	325,232	396,018	488,611		\$1,954,691
Options	184,946	259,967	320,051	359,844	396,005	488,749		\$2,009,562
EPS Grant ^{b,c}						374,993		\$374,993
Total	\$614,266	\$815,690	\$1,023,719	\$1,086,076	\$1,382,023	\$2,010,763	\$361,000d	\$7,293,537

a Data for Mr. Raines and Mr. Howard as disclosed by Fannie in its Annual Proxy Statements for 1998-2003. Data for Ms. Spencer provided to OFHEO by Fannie Mae on December 14, 2006. Valuation of stock options is derived from a modified Black-Scholes pricing model, as disclosed by Fannie Mae in the "Option Grants Table" included in those statements. Those tables do not include the value of the Earnings Per Share Challenge Grants awarded, but the value of those awards are included in the "EPS Grant" portion of this table. PSP data reflects only stock awards actually paid out. In addition to these amounts, Ms. Spencer received a restricted stock grant valued at \$187,500 in 2000.

b Bonus, PSP, and EPS Challenge Grant components of compensation were tied to attaining EPS goals.

c Most of the EPS Challenge Grants were granted on January 18, 2000, and all such grants vested on January 23, 2004. Here the value of those grants is included in 2003, the year the Challenge Grant EPS goal was attained. The value of the EPS Challenge Grants is the grant-date Black-Scholes value as estimated by Fannie Mae.

d 2004 Salary; other payments cancelled or deferred. Individuals received portions of salaries in 2005.

III. Procedures

The Notice of Charges has been transmitted to the named individuals and their counsel. The Notice was transmitted contemporaneously with a request to the Office of Personnel Management for assignment of a United States Administrative Law Judge (ALJ).

Steps in the administrative process include filing with the judge, presentation of motions and requests for rulings by the judge, requests for discovery of documents, conferences, orders and other matters.

A public hearing may be required, where published rules of procedure apply.

After a determination by the Administrative Law Judge on the facts in the case and the requested remedies, the ALJ provides a recommended decision to the Director of OFHEO for a final decision in light of all the evidence presented. The Director may accept, modify or set aside the ALJ's determination.

Should the individuals charged not agree with the Director's determination, they may appeal to a federal court for review, in much the same manner as a trial court decision may be appealed to a higher court. The time and conduct of the ALJ proceeding, the Director's determination and any judicial appeal are governed by law and regulation, requests by the parties and directions given by the ALJ, the Director or the federal court.

(Notice of Charges Attached)

Attachments:

Notice of Charges

619.01 KB

###

OFHEO's mission is to promote housing and a strong national housing finance system by ensuring the safety and soundness of Fannie Mae and Freddie Mac.

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Exhibit C

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UPDATE 2-US regulator settles with former Fannie Mae execs

Fri, Apr 18 2008

(Adds quotes from Raines, Howard's attorney, background, byline)

By [Lynn Adler](#)

NEW YORK, April 18 (Reuters) - Ex-Fannie Mae FNM.N chief Franklin Raines and two other former executives agreed to pay more than \$31 million in a settlement over their roles in a 2004 accounting scandal at America's largest home financing agency, its regulator said on Friday.

The Office of Federal Housing Enterprise Oversight, or OFHEO, in 2006 leveled charges against Raines, the former chairman and chief executive officer; former Chief Financial Officer J. Timothy Howard and ex-Controller Leanne Spencer. The charges included earnings mismanagement, failure to ensure adequate internal controls and the release of misleading financial reports.

In consent orders, the three former executives agreed to payments which OFHEO estimated at \$24.7 million for Raines, \$6.4 million for Howard and \$275,000 for Spencer.

"OFHEO's mission is to ensure that the enterprises operate in a safe and sound manner," OFHEO Director James Lockhart said in a news release. "That cannot occur without corporate management providing prudent and responsible leadership and setting the appropriate ethical and overall 'tone at the top.'"

Sources familiar with the cases played down the total costs to the former executives, saying required payments to the government would be covered by insurance and that surrendered stock options are without value.

Under the settlement, Raines will pay \$2 million to the government, donate proceeds from the sale of Fannie Mae stock valued at \$1.8 million, and surrender claims related to stock options valued at \$15.6 million when issued.

Those options were issued with strike prices between \$77 and \$81, but the company's stock now trades below \$29, effectively making the options worthless, a source familiar with the case said.

Of Raines' \$91 million in compensation between 1998 and 2003, more than \$84 million was tied to earnings per share targets and faulty accounting, OFHEO said in 2006.

Raines, in a statement, said he accepted managerial accountability but not legal culpability.

"My agreement to end this dispute ... is consistent with my acceptance of accountability as the leader of Fannie Mae and with my strong denial of the allegations made against me by OFHEO," he said.

Of the \$6.4 million in fines and penalties against Howard, the former CFO, \$5.2 million comes from surrendering now-worthless options and \$750,000 will be paid to the government by insurance. Howard's charitable donation from the sale of Fannie Mae stock would be valued at about \$200,000, OFHEO said.

"The settlement is a capitulation by OFHEO, reflecting that its concocted claims never had an ounce of merit," Howard's attorney, Steven Salky, said in a statement.

Spencer's attorney, David Krakoff, said in a news release that the OFHEO reports and allegations had no merit.

As a result of the accounting scandal at Fannie Mae, and at its sibling, Freddie Mac FRE.N, OFHEO imposed strict capital requirements and growth limits on both companies.

The restrictions were recently relaxed to enable the federally chartered companies to provide more support to the distressed U.S. housing and mortgage markets.

Fannie Mae and Freddie Mac buy mortgages from lenders, freeing up more funds to create home loans. The companies repackage the mortgages as securities to sell to investors or to hold in their own portfolios.

In 2006, Fannie Mae paid a \$400 million civil fine in a settlement with OFHEO and the Securities and Exchange Commission. (Editing by [Jonathan Oatis](#))

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Exhibit D

Former Fannie Mae CFO joins debate on its future

Kathleen Day, Special for USA TODAY 7:07 p.m. EST January 27, 2014

Guest columnist Kathleen Day examines former Fannie Mae CFO Timothy Howard's new book, "The Mortgage Wars."

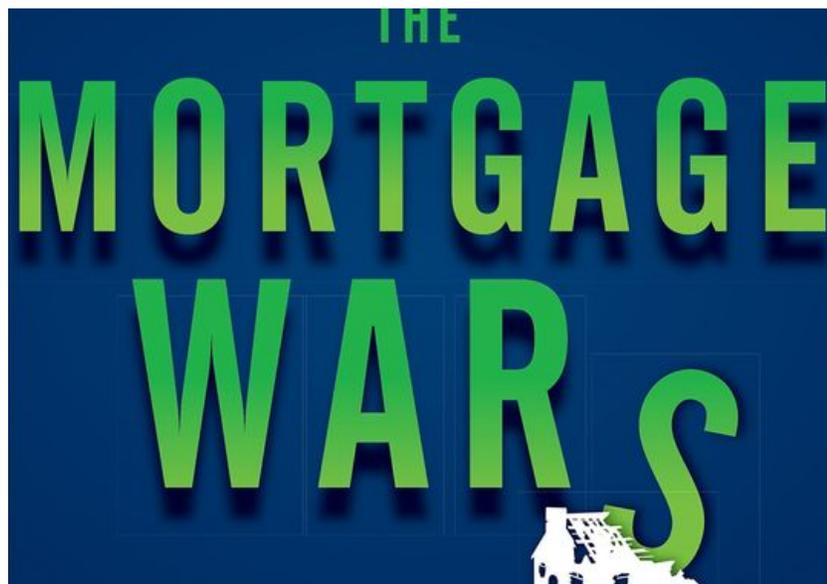


(Photo: McGraw-Hill)

The former chief financial officer of Fannie Mae — fired in 2004 amid a \$6 billion accounting scandal at the giant mortgage company — is back in the game. Or so he hopes.

Timothy Howard wants to be part of the debate over the future of Fannie Mae and its counterpart, Freddie Mac, and has written a new book, *The Mortgage Wars*, he thinks will help him do that.

The federal government took over the two mortgage-finance companies in 2008 at the height of the financial crisis to avert their possible failure, an event that would have been catastrophic for an economy already on the verge of collapse. What to do with the companies, which have been a mainstay of the multitrillion-dollar mortgage market for nearly three decades, remains the big, unanswered question in the aftermath of the meltdown. Debate will likely heat up over the issue in the next 24 months as Democrats and Republicans work to craft a solution before President Obama's term ends.



The Mortgage Wars by Timothy Howard (Photo: McGraw-Hill)

Howard, in an interview earlier this month from Mexico, where he was escaping the East Coast's cold snap, says the book aims to tell his side of the accounting scandal but also his view of the mortgage crisis and Fannie Mae's role in it. He started the book in 2012, when a judge dismissed for lack of "direct evidence" a shareholder suit alleging Howard and former Fannie Mae CEO Franklin Raines, also ousted in 2004, manipulated earnings to meet goals tied to their multimillion-dollar pay packages.

"I want to re-insert myself into the public discussion," Howard says, asserting in the book that the dismissal restored "my public identity as a career financial executive and risk manager rather than as the suspected architect of an accounting fraud."

Anyone who's followed Fannie Mae and Freddie Mac over the years will find Howard's account of what happened to be same-old, same-old: Fannie Mae did no wrong during his 20 years there, had a government mandate to promote homeownership that in no way conflicted with its obligation to maximize its shareholders' profits, and didn't need to be taken over and only was because ideologues in the Bush White House hated the company.

But even people who differ, sometimes widely, over the companies' future are nearly unanimous that such an account of the past is wrong. Former Treasury secretary Henry Paulson — who put the two companies into federal conservatorship — has called their former structure flawed, posing an "inherent conflict between public purpose and private ownership that was destabilizing" to the firms. The left-leaning Center for American Progress

agrees that a return to the status quo of being shareholder-owned companies with an implicit, blanket taxpayer guarantee would be a mistake. So does the America Enterprise Institute's Peter Wallison, who for years has argued Fannie Mae and Freddie Mac's structures caused them to take undue risks. "I don't think Howard has anything to offer," Wallison says. "The book is all self-serving."

Debate over the firms' fate generally falls into three camps: those who think the companies should be 100% part of the government, those who think they should be private with no government support, and those who think they should be made into two or more highly regulated private companies that, as long as they put their investors' money at risk as well, can buy an explicit government guarantee for the mortgage securities they create.

Until midterm elections, the debate will be confined to hearings and to proposed legislation in the Senate that can go nowhere in the House. But if Democrats win enough seats in the House this fall — and that's a big "if" — they and moderate House Republicans might have the votes to craft a plan with the Senate that consumer groups and many in the housing industry would back.

When Paulson put the two companies into the government's hands, debate had long been polarized between proponents who would not admit they had any problems and opponents who would not admit they did any good. The meltdown brought many to a healthier, more realistic middle ground.

The fact is the two companies have over several decades lowered the cost of borrowing to buy a home for millions of Americans, serving as the backbone of the housing market, which in turn has been a key to economic growth. But they also grew in size and political power to a point where they posed huge risks to investors and taxpayers alike. Howard accepts no responsibility for Fannie Mae's woes, but tacitly concedes a return to the companies' former structure is unlikely, hence his desire to be part of the dialogue.

But lacking a more realistic critique of history, Howard, with or without the book, sheds little light for policymakers on how to preserve the pluses while avoiding the pitfalls Howard was part of.

Kathleen Day is a faculty member at the Johns Hopkins University Carey Business School. She is a lecturer with a specialty in financial crises and how they spread. Day previously taught at Georgetown University's graduate program in real estate and was a Washington Post business reporter who covered the financial services industry.

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