

Federal Reserve Seeks to Protect U.S. Bailout Secrets

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Global Research, January 11, 2010
[Bloomberg](#) 11 January 2010

Region: [USA](#)
Theme: [Global Economy](#)

The Federal Reserve asked a U.S. appeals court to block a ruling that for the first time would force the central bank to reveal secret identities of financial firms that might have collapsed without the largest government bailout in U.S. history.

The U.S. Court of Appeals in Manhattan will decide whether the Fed must release records of the unprecedented \$2 trillion U.S. loan program launched after the 2008 collapse of Lehman Brothers Holdings Inc. In August, a federal judge ordered that the information be released, responding to a request by Bloomberg LP, the parent of Bloomberg News.

“This case is about the identity of the borrower,” said Matthew Collette, a lawyer for the government, in oral arguments today. “This is the equivalent of saying ‘I want all the loan applications that were submitted.’”

Bloomberg argues that the public has the right to know basic information about the “unprecedented and highly controversial use” of public money. Banks and the Fed warn that bailed-out lenders may be hurt if the documents are made public, causing a run or a sell-off by investors. Disclosure may hamstring the Fed’s ability to deal with another crisis, they also argued. The lower court agreed with Bloomberg.

‘Right to Know’

“The question is at what point does the government get so involved in the life of the institution that the public has a right to know?” said Charles Davis, executive director of the National Freedom of Information Coalition at the University of Missouri in Columbia. Davis isn’t involved in the lawsuit.

The ruling by the three-judge appeals panel may not come for months and is unlikely to be the final word. The loser may seek a rehearing or appeal to the full appeals court and eventually petition the U.S. Supreme Court, said Anne Weismann, chief lawyer for Citizens for Responsibility and Ethics, a Washington advocacy group that supports Bloomberg’s lawsuit.

New York-based Bloomberg, majority-owned by Mayor [Michael Bloomberg](#), sued in November 2008 after the Fed refused to name the firms it lent to or disclose the amounts or assets used as collateral under its lending programs. Most were put in place in response to the deepest financial crisis since the Great Depression.

‘Almost Two Years’

“Bloomberg has been trying for almost two years to break down a brick wall of secrecy in order to vindicate the public’s right to learn basic information,” [Thomas Golden](#), an attorney for the company with Willkie Farr & Gallagher LLP, wrote in court filings. He said the Fed may be trying “to draw out the proceedings long enough so that the information Bloomberg seeks is no longer of interest.”

The Fed’s balance sheet debt doubled after lending standards were relaxed following [Lehman’s](#) failure on Sept. 15, 2008. That year, the Fed began extending credit directly to companies that weren’t banks for the first time since the 1930s. Total central bank lending exceeded \$2 trillion for the first time on Nov. 6, 2008, reaching \$2.14 trillion on Sept. 23, 2009.

The lawsuit, brought under the U.S. [Freedom of Information Act](#), or FOIA, came as President [Barack Obama](#) criticized the previous administration’s handling of the \$700 billion Troubled Asset Relief Program passed by Congress in October 2008. Obama has said funds were spent by the administration of former President [George W. Bush](#) with little accountability or transparency.

Press and Public

FOIA requires federal agencies to make government documents available to the press and public.

In her Aug. 24 ruling, U.S. District Judge [Loretta Preska](#) in New York said loan records are covered by FOIA and rejected the Fed’s claim that their disclosure might harm banks and shareholders. An exception to the statute that protects trade secrets and privileged or confidential financial data didn’t apply because there’s no proof banks would suffer, she said.

The central bank “speculates on how a borrower might enter a downward spiral of financial instability if its participation in the Federal Reserve lending programs were to be disclosed,” Preska, the chief judge of the Manhattan federal court, said in her 47-page ruling. “Conjecture, without evidence of imminent harm, simply fails to meet the board’s burden” of proof.

In its appeal, the Board of Governors of the Federal Reserve System argued that disclosure of “highly sensitive” documents, including 231 pages of daily lending reports, threatens to stigmatize lenders and cause them “severe and irreparable competitive injury.”

‘Confidentiality is Essential’

“Confidentiality is essential to the success of the board’s statutory mission to maintain the health of the nation’s financial system and conduct monetary policy,” Assistant U.S. Attorney General [Tony West](#) and Fed lawyer Richard Ashton wrote in a legal brief to the appeals court.

“The board’s ability to administer lending programs crucial to maintaining national financial and economic stability will be severely undermined” if lenders won’t come to the regional Federal Reserve Banks “for their funding needs, particularly in time of economic crisis,” they said.

Historically, the type of government documents sought in the case has been protected from public disclosure because they might reveal competitive trade secrets, Davis said. Laws governing such disclosures may be due for a change, he said, following the far-reaching U.S. bailout.

“If you are in need of a bailout and turn to the federal government and say, ‘help,’ with that comes some requirements in terms of transparency,” Davis said.

Joined in Bid

The Fed is joined in its bid to overturn Preska’s order by the Clearing House Association LLC, an industry-owned group in New York that processes payments between banks. The group assailed the judge’s decision for what it said were legal errors, such as applying the wrong standard in weighing the exception to FOIA.

The group includes ABN Amro Bank NV, a unit of Royal Bank of Scotland Plc, Bank of America Corp., The Bank of New York Mellon Corp., [Citigroup Inc.](#), Deutsche Bank AG, HSBC Holdings Plc, [JPMorgan Chase & Co.](#), US Bancorp and Wells Fargo & Co.

Preska allowed the association to join the case so that it could directly participate in the appeal. More than a dozen other groups or companies filed amicus, or friend-of-the-court, briefs, including the American Society of News Editors and individual news organizations.

The judge postponed the application of her ruling to allow the appeals court to consider the case.

Also today, the same appeals court was to hear arguments in a lawsuit brought by [News Corp.](#) unit Fox News Network seeking similar documents. U.S. District Judge [Alvin Hellerstein](#) in New York sided with the Fed in that case and refused to order the agency to release the documents.

The case is Bloomberg LP v. Board of Governors of the Federal Reserve System, 09-04083, U.S. Court of Appeals for the Second Circuit (New York).

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