



Testimony of

Mr. Thomas Marano
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before the

Subcommittee on Housing and Community Opportunity,
Committee on Financial Services, U.S. House of Representatives

November 18, 2010

Chairwoman Waters, Congresswoman Capito, and members of the subcommittee, I am Tom Marano, the chief executive officer of mortgage operations for Ally Financial. I appreciate the opportunity to appear before you today.

Ally's mortgage business is conducted through GMAC Mortgage. Founded in 1985, GMAC Mortgage is currently the fifth largest residential mortgage servicer in the United States, servicing 2.4 million loans, about 96% of which are owned by others. Since 2008, we have provided more than \$176 billion in funding to U.S. homeowners each year, and we provide more than \$2 billion each month in short-term credit to mortgage loan originators.

Madam Chairwoman, I want to address specifically the issues that bring us here today. Our company's process for preparing foreclosure affidavits was flawed. There were affidavits signed outside the immediate physical presence of a notary and without direct personal knowledge of the information in the affidavit. These flaws are entirely unacceptable to me. I directed my management team to devote whatever resources are required to correct these flaws and bring integrity back to the foreclosure process.

We understand the pain caused by foreclosures. In foreclosures, everybody loses – the homeowner, the servicer, the investor, and the community. We therefore do everything that we can to avoid foreclosures. When a homeowner faces difficulty in a mortgage, we strive to find a solution that is affordable and sustainable for the borrower, while balancing the contractual rights of the investor on whose behalf we service. Since 2008, GMAC Mortgage has achieved approximately 565,000 workout solutions for customers. In each of the last two years, GMAC Mortgage has successfully instituted more alternatives to foreclosure, such as forbearance, repayment plans, modifications, short sales, and deeds-in-lieu of foreclosure, than we have had foreclosure sales.* Based on our review to date, no loan was foreclosed unless the borrower was in default.

* Statistics for this year are as of September 30, 2010.

The errors we found in the affidavits of indebtedness should not have occurred. We are investigating and remediating the errors. We reformed our internal foreclosure processes to increase the training that we provide to employees responsible for signing foreclosure documents; we strengthened our internal affidavit signing policies; and we substantially increased the number of employees handling foreclosure documentation. Moreover, in an effort to minimize the risk that even a single foreclosure might go forward inappropriately during our review, we took steps to suspend foreclosure sales in 23 judicial foreclosure states.

We have resumed foreclosure sales only after an individualized review of each case. Our individualized review encompasses all loans in the foreclosure process, as well as loans that have completed the foreclosure process but which GMAC Mortgage could still address if there were deficiencies in the affidavit.

For any case that is still in process and has not yet received a judgment, we are filing a new and properly verified affidavit with the court, as appropriate, and where there was no prior affidavit, we are processing any necessary affidavits under our new procedures.

For any matter that has proceeded to a judgment in favor of foreclosure but the foreclosure sale has not yet been confirmed to have occurred, we are filing a new and proper affidavit with the court, as appropriate. Where the original affidavit was substantively correct, we are generally seeking the court's permission to proceed with the prior judgment. In some jurisdictions, we are filing motions to vacate prior judgments and will refile a subsequent foreclosure proceeding with a new and proper affidavit.

We have taken additional measures in all states to review foreclosure sales. Across the United States, we have implemented a new process that reviews all pending foreclosure sales going forward within seven days of the scheduled sale by an internal quality control team independent of our foreclosure department. We have also engaged national mortgage counsel and PricewaterhouseCoopers to conduct a comprehensive review of our foreclosure policies and procedures across the United States.

Madam Chairwoman, I want to stress that foreclosure is a painful last resort where everyone loses. By the time a loan goes to foreclosure sale, the borrower is, on average, 413 days behind in payments and in many cases taxes and insurance obligations have not been met. GMAC Mortgage strives to find alternate solutions that avoid foreclosure and keep families in their homes, and we are proud of the 565,000 workout solutions we have found for customers since 2008. In addition, our rate of conversion from HAMP-trial to HAMP-permanent loan modifications is 71%. Moreover, for the last eight months, only about 15% of customers in permanent HAMP loan modifications have failed to make their payment six months after the loan modification. This is below the average for the industry. As this subcommittee examines issues related to foreclosures, I urge you to make sure that alternatives to foreclosure are also robust and available.

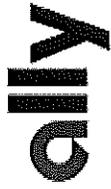
Attached to my written testimony is a chart that illustrates the foreclosure process and shows GMAC Mortgage's commitment to seeking alternative solutions that preserve homeownership. Throughout the foreclosure process, GMAC Mortgage reaches out to customers about alternatives to foreclosure that may preserve homeownership. Even as the

process is ongoing, borrowers are able to remain in the home, on average, about 15 months. At GMAC Mortgage, we believe that foreclosure should only occur after all home preservation efforts have failed.

Preserving homeownership is in the best interest of all parties. In addition to the benefits to families, it is beneficial to GMAC Mortgage. We are paid fees and are able to recover advances and expenses more rapidly after a successful modification. In contrast, during a foreclosure, we must make servicing advances until the sale of the property and we lose the servicing fee income. Therefore, it is in our best interest to strive to place the borrower in a loan modification.

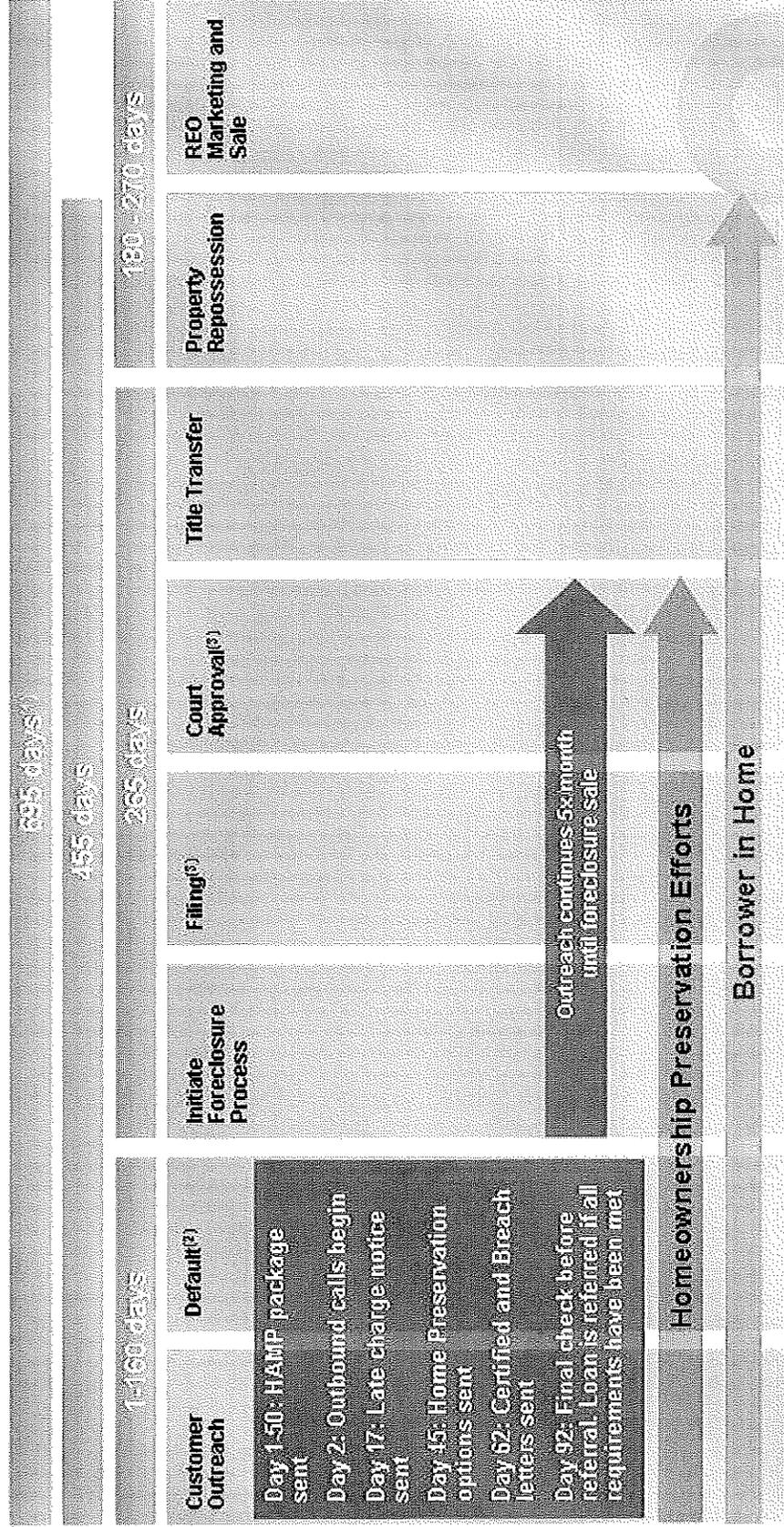
Finally, Madam Chairwoman, I have personally been a longstanding advocate of loan modification. I brought that perspective to GMAC Mortgage, and I strive to ensure that no American loses a home without a thorough and complete opportunity to obtain loan modification or an alternative to foreclosure. For example, I often communicate with homeowners directly. From these conversations, it is clear to me that everyone in the industry needs to do more to help homeowners in this difficult environment. As one example, we are working closely with state officials to launch Hardest Hit Fund programs as quickly as possible.

Your letter inviting me to testify contained several specific questions. Attached to my testimony are specific responses to your questions. Thank you for the opportunity to appear before you today, and I would be happy to answer any questions that you may have for me.



Foreclosure as a Last Resort

- Ally strives to preserve homeownership whenever possible and has completed more than 220,000 HAMP and non-HAMP permanent loan modifications since 2008
- The foreclosure process is a lengthy procedure, which does not get initiated until after many months of delinquency, default and when all loss mitigation efforts have failed



⁽¹⁾ Day counts represent GMAC Mortgage national average

⁽²⁾ Default reached at 160 days

⁽³⁾ Applicable in the judicial foreclosure process only

Responses to letter from Rep. Maxine Waters, Chairwoman, Subcommittee on Housing and Community Opportunity, to Thomas Marano (Nov. 10, 2010). Responses are as of November 15, 2010, unless otherwise noted. Although the responses are based on information believed to be reliable, GMAC Mortgage's ("GMACM") review of issues concerning the execution of foreclosure documents is ongoing.

- (1) Please describe the process your firm uses when foreclosing on borrowers (give a step-by-step description, including the types of systems used, when contractors might be employed, the number of employees involved, and any other relevant information).**

GMACM's current foreclosure staff includes 120 full-time employees and 27 contractors. Our staff members rely on a variety of computer systems, including programs called (1) LoanServ, which provides tracking of the mortgage servicing process and all key milestones associated with the process of servicing mortgage loans, and (2) Process Management, which is a communication tool for GMACM and its foreclosure counsel and includes electronic referrals and critical data from LoanServ and all necessary documents for foreclosure referral.

The foreclosure process differs from state to state but can generally be categorized as either judicial or non-judicial.

Non-judicial foreclosures are based on a "power of sale" provision in the security instrument between the lender and the borrower, which authorizes the lender to accelerate the outstanding debt upon default and to sell the property via a third-party trustee. GMACM refers the loan to the appropriate trustee when the loan is 105 days delinquent (for loans serviced for Fannie Mae) and 120 days delinquent (other loans). GMACM's policy is to refer within the investor-required timeframes; however if there is active dialogue with the customer to explore potential workout options, foreclosure referral may be delayed. GMACM refers loans to foreclosure at an average of more than 160 days delinquent. The trustee then provides written notice of acceleration and of a foreclosure sale date to the property owner and all recorded lienholders. After all notices have been provided, and if the borrower does not pay-off the debt or enter into a loan modification or payment plan with the lender, the property is sold at an auction to the highest bidder. The borrower can often reclaim the property upon payment after sale, but this right varies from state to state. The entire non-judicial process takes an average of 30 to 90 days to complete, depending on the time requirements set forth in the relevant state statute. We note that non-judicial foreclosures generally do not involve affidavits that are filed with a court.

By contrast, a judicial foreclosure is commenced in the appropriate state court like any other lawsuit. GMACM has a network of foreclosure counsel across the country that conduct its judicial foreclosures. Prior to filing the lawsuit, the lender sends a letter, or a series of letters, to the borrower providing notice that the loan is in default and requesting payment of the amount outstanding. If the loan is not brought current, a lawsuit is filed, naming as defendants the borrower and any other person or entity with an interest in the property, and defendants are served a copy of the complaint. Within a specified time period (usually 20 or 30 days) following proper service of the complaint, each defendant must file an answer to the complaint. GMACM employs local foreclosure counsel, typically choosing from the investor's approved list. (Fannie Mae requires servicers to use only Fannie-approved foreclosure counsel.) When the lender files

a motion asking the court to enter judgment in its favor, an affidavit of indebtedness may be required. If the motion is denied, the case will be set for trial. After judgment is entered in favor of the lender, the foreclosure sale will be scheduled and the property may be sold to a third party or repurchased by the lender. Many states will provide for judicial confirmation of the sale after the fact to ensure that the sale was handled in an appropriate and commercially reasonable manner. The time frame of this process can vary greatly from state to state or even from court to court within a given state. On average, by the time the property is repossessed, the borrower has been delinquent for 425 days and there have been numerous attempts to cure the default.

In both non-judicial and judicial foreclosures, the borrower typically has the right to reinstate the loan at any time prior to the foreclosure sale. A borrower may also request a modification of the loan pursuant to the Home Affordable Modification Program (“HAMP”), depending on whether the borrower satisfies the income requirements and other guidelines applicable under HAMP. Additionally, many lenders offer traditional loan modification opportunities (i.e., non-HAMP) during the process, up to the point of foreclosure sale. Of the 505,426 loans GMACM has rescheduled since January 2008, 35,925 were through HAMP and 190,476 were through traditional workout plans. The remaining 279,025 were repayment plans arranged with borrowers. (Figures as of September 30, 2010.)

(2) Please explain the rationale behind the voluntary foreclosure moratorium recently announced by your firm as well as the rationale for the duration of the moratorium.

On September 17, 2010, GMACM through written communication directed its real estate agents and outsource vendors to suspend evictions and real estate owned foreclosure sales in the 23 states where judicial foreclosures use affidavits such as the affidavits found to be at issue. This action, which was incorrectly reported in the media as a “moratorium” on foreclosures, was taken in an effort to minimize the risk that even a single foreclosure might go forward inappropriately during our review. Since the suspension of foreclosure processing in September, we have resumed each foreclosure sale or eviction only after an individualized review of the case.

(3) Please explain your firm’s plan and timeline to resume foreclosures.

Since the suspension of foreclosure processing in September, as detailed above, we have resumed each foreclosure sale or eviction only after an individualized review of the case.

(4) In the last two years, in what proportion of foreclosures in judicial foreclosure states did your firm use a lost note affidavit?

GMACM does not track the proportion of judicial foreclosures that use a lost note affidavit.

(5) How does your firm establish if the trustee is in possession of the note?

A trustee is only used in non-judicial foreclosure states. The trustee would not normally have possession of the note because non-judicial foreclosures are largely governed by the deed of trust, not the note.

- (6) **What internal controls do you have in place to monitor whether the outside law firms you employ follow all relevant laws, regulations and company policies related to foreclosure (including notarization, process service, confirmation of the amount due by the borrower, whether appropriate fees were levied, etc.)?**

GMACM is enhancing the internal controls for outside counsel. This enhancement includes an additional due diligence questionnaire, an onsite visit, and a sampling audit. Many of the firms that GMACM engaged were Fannie Mae or Freddie Mac designated firms, and we understand that Fannie Mae and Freddie Mac routinely conduct their own reviews and audits of such firms.

- (7) **What is the typical educational level of someone employed by your firm to sign-off on foreclosures (i.e., a “robo-signer”)? What is the typical salary of such an employee? What is the typical turnover for such employees? What is the typical daily/weekly/monthly caseload of such an employee?**

More than half of the individuals currently employed by GMACM to execute foreclosure-related documents have completed four years of college; many others have associate’s degrees or some level of college education. Typical annual salaries range from \$48,000 to \$53,000. Those who execute foreclosure-related documents are permanent employees of GMACM and there is no typical level of turnover. Currently, employees who execute foreclosure-related documents review an average of 31 files per day, though they may review more per day at present because of our remediation effort and increased hours of operation for the remediation effort. We currently have an additional 65 full time employees assisting with the remediation effort.

- (8) **Has your firm ever been fined by any federal regulator (FHA, FHFA), or been sued by any investor, for failure to properly service loans or engage in appropriate loss mitigation?**

GMACM is aware of *American Residential Equities, LLC v. GMAC Mortgage, LLC*, Southern District of Florida, Miami Division, 1:10-CV-21943-ASG, which was filed in June 2010 and is currently in litigation. GMACM denies the allegations in the case. GMACM is not aware of an instance in which it was fined by a federal regulator for failure to properly service loans or engage in appropriate loss mitigation.

Note: GMACM has operated as a mortgage servicer for more than 25 years, and the question is not limited to a time period. This response is based on a review of readily available records and personal recollections of current GMACM employees.

- (9) **Of the borrowers whose trial Home Affordable Modification Program (HAMP) modifications failed to become permanent modifications, what proportion of those borrowers failed to achieve permanent modifications because they did not pay their mortgages during the trial period? What proportion failed to achieve permanent modifications because they failed to submit the appropriate paperwork?**

For loans serviced by GMACM, 19% of borrowers who executed a HAMP trial failed to reach a permanent HAMP modification because the borrower did not make the required payments during the trial period. For the loans serviced by GMACM, 12.8% of the borrowers were not offered a trial payment because the borrowers failed to submit the appropriate paperwork.

- (10) How many proprietary short sales has your firm completed since April of 2010? How many short sales has your firm completed under the Home Affordable Foreclosure Alternatives (HAFA) Program since that program launched in April 2010? Why have you completed fewer foreclosures under the HAFA program than under your proprietary program?**

GMACM has completed 12,322 proprietary short sales since April 2010, and has completed 4 HAFA short sales in that same period. One of the reasons the proprietary program has had a higher success rate than the HAFA program is the requirement that HAFA participants meet all HAMP eligibility requirements, including a maximum debt-to-income ratio and a mortgage of less than \$729,000. Also, the HAFA program targets individuals who have first failed to complete the HAMP or proprietary loan modification programs. As such, these individuals are generally more interested in remaining in their homes with a modified payment than in selling their homes. We have found that solicitations under the HAFA program have resulted in a 1% response rate, and follow up discussions with borrowers have indicated a lack of interest in selling their properties. On the other hand, borrowers who participate in the proprietary short sale program have already identified that selling the property would be better for their particular financial situation, and they do not necessarily want to gather all of the documentation required by the HAMP/HAFA programs. In summary, our borrowers appear to find the proprietary short sale program easier to navigate and the proprietary program is demonstrably successful.

- (11) Does/did your firm purchase document reproduction services from the Lender Processing Services Subsidiary DocX (services include creating missing or intervening assignments, curing defective assignments, retrieving a UCC package, recreating collateral files, creating allonges, etc.)? If so, which services did your firm purchase? For how many foreclosure cases were these services purchased?**

To the best of our knowledge, we do not use DocX.

- (12) What is your firm's position on providing borrowers with a mandatory right to loss mitigation (such as the right provided under H.R. 3451)?**

GMAC Mortgage believes it is important to attempt – in every case – to find an affordable and sustainable solution as an alternative to foreclosure. Our experience indicates that alternatives are often available, as indicated by the 565,000 workout options we have achieved since 2008 as alternatives to foreclosures. At the same time, we have found that affordable and sustainable alternatives to foreclosure are not always viable. GMAC Mortgage has not expressed an opinion specifically on pending legislation in this area. GMAC Mortgage would welcome the opportunity to work with the subcommittee and share our experience and findings in home ownership preservation.

(13) What is your firm's position on judicial modification of bankruptcy filers' mortgages (for their primary residences)?

GMAC Mortgage prefers to work with borrowers to find affordable and sustainable modifications to loans prior to a bankruptcy filing. Our experience has been that working with a customer on home ownership preservation efforts is a preferable course of action whenever possible.