

Hearing Date and Time: June 12, 2012, 10:00 a.m. (EDT)

PREET BHARARA
United States Attorney for the
Southern District of New York
By: JOSEPH N. CORDARO
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2745
Facsimile: (212) 637-2686
E-mail: joseph.cordaro@usdoj.gov

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 12-12020 (MG)

Jointly Administered

**STATEMENT OF THE UNITED STATES OF AMERICA ON BEHALF OF THE
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION CONCERNING
DEBTORS' MOTIONS TO AUTHORIZE CONTINUED ORIGATION AND
SERVICING ACTIVITIES (DOCKET NOS. 44 AND 57)**

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, respectfully submits this statement on behalf of the Government National Mortgage Association ("Ginnie Mae") in order to reserve Ginnie Mae's rights with regard to the (i) Debtors' Motion for Interim and Final Orders Under Sections 105(a), 363, 364, 503(b), 1107(a), and 1108 of the Bankruptcy Code Authorizing the Debtors to (I) Process and Where Applicable Fund Prepetition Mortgage Loan Commitments, (II) Continue Brokerage, Origination and Sale Activities Related to Loan Securitization, (III) Continue to Perform, and Incur Postpetition Secured Indebtedness, Under the Mortgage Loan Purchase and Sale Agreement With Ally Bank and Related Agreements, (IV) Pay Certain Prepetition Amounts



Due to Critical Origination Vendors, and (V) Continue Honoring Mortgage Loan Repurchase Obligations Arising in Connection With Loan Sales and Servicing, Each in the Ordinary Course of Business [Docket No. 44] (the “Origination Motion”); and (ii) Debtors’ Motion for Interim and Final Orders Under Sections 105(a), 361, 362, 363, 1107(a), and 1108 of the Bankruptcy Code (I) Authorizing the Debtors to Continue in the Ordinary Course of Business (A) Servicing Governmental Association Loans and (B) Foreclosure Activities Related to Certain Real Estate Owned by Fannie Mae, Freddie Mac, and Ginnie Mae; (II) Authorizing the Debtors to Pay Certain Prepetition Amounts Due to Critical Servicing Vendors and Foreclosure Professionals; (III) Granting Limited Stay Relief to Enable Borrowers to Assert Related Counter-Claims in Foreclosure and Eviction Proceedings; (IV) Authorizing the Debtors to Use Cash Collateral Under the Fannie Mae EAF Facility; and (V) Granting Related Relief [Docket No. 57] (the “Servicing Motion,” and together with the Origination Motion, the “Motions”).¹

1. As set forth in the Motions, the Debtors service over 2.4 million mortgage loans with an aggregate unpaid principal balance of approximately \$374.2 billion, approximately 68% of which loans are owned, insured or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae. Origination Motion ¶ 4; Servicing Motion ¶ 4. Approximately \$45 billion of these loans back securities that are guaranteed by Ginnie Mae.

2. Ginnie Mae strongly supports Debtors’ efforts to maintain the going concern value of their operations and assets while pursuing a plan of reorganization. Not only will the relief requested in the Motions maximize the value of the Debtors’ estates for the benefit of their

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to those terms in the Motions. The Servicing Motion is scheduled to be heard on June 12, 2012. The hearing on the Origination Motion is scheduled for June 18, 2012.

creditors, the Debtors have noted that the relief requested in the Motions will help to stabilize the U.S. housing market. Servicing Motion ¶ 11.

3. As averred by Debtors, debtor GMAC Mortgage is a Ginnie Mae-approved issuer of mortgage backed securities. *See* Servicing Motion ¶ 20. Specifically, GMAC Mortgage and Ginnie Mae are parties to certain Guaranty Agreements, which incorporate the Ginnie Mae Mortgage-Backed Securities Guide. *See id.* ¶ 20 n.11 (referring to the Ginnie Mae Guide). The Ginnie Mae Guaranty Agreements govern all of GMAC Mortgage's obligations as a Ginnie Mae issuer. These obligations thus arise from a single contract—the Guaranty Agreement.

4. It is Ginnie Mae's understanding that Debtors' filing of separate Origination and Servicing Motions was not an attempt to bifurcate origination and servicing responsibilities in a manner that would result in the sale of mortgages backing Ginnie Mae-guaranteed securities without an assumption by the purchaser of all responsibilities and liabilities of a Ginnie Mae issuer. Nor was it intended as a suggestion that Ginnie Mae would consent to such a bifurcation, which it does not. Instead, Debtors emphasized during the first-day hearings that their purpose in splitting up the motions was merely for ease of understanding with respect to Debtors' origination and servicing businesses:

The debtors did not split this up in an attempt to create a permanent ruling by Your Honor that these are all separate functions. We split it up because we believed that was the easiest way for parties to understand and the way we have an origination business and a servicing business.

I think we can represent that nothing in these orders is going to affect anybody's rights to argue agreements are integrated, agreements are one, cannot be bifurcated or otherwise. . . . That's not the intent of these orders to create that. It's just to get the relief we're requesting. And we represent that we are not trying to do that in these orders.

May 15, 2012 Tr. (continued First Day Hrg.) at 36:2-36:15.

5. Based on Debtors' representations concerning the purpose of the separate Motions, and mindful of the importance of the relief sought therein, Ginnie Mae does not object to the Motions. Nevertheless, Ginnie Mae reserves all of its rights as guarantor of securities issued by GMAC, including the rights to approve or disapprove the transfer of the servicing of mortgages backing Ginnie Mae guaranteed securities.

Dated: New York, New York
June 5, 2012

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: /s/ Joseph N. Cordaro
JOSEPH N. CORDARO
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2745
Facsimile: (212) 637-2686
Email: joseph.cordaro@usdoj.gov