Taxpayers Continue to Own 74% of GMAC (Rebranded as Ally Financial Inc.) from the TARP Bailouts

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INTRODUCTION[i]

General Motors Acceptance Corp. ("GMAC," which has been rebranded as Ally Financial Inc., "Ally") is the second largest remaining TARP investment, with $14.6 billion in TARP funds owed, for which taxpayers own 74% of the company. As part of the auto bailouts of General Motors Corp. ("GM") and Chrysler LLC ("Chrysler"), the Federal Government made a coordinated rescue of GMAC, once the auto financing subsidiary of GM. According to Treasury, Government assistance began flowing to GMAC at the end of 2008 to keep financing available to creditworthy GM dealers so they could continue to order cars, a function deemed necessary to sustain the auto industry. Treasury made three sequential TARP investments in GMAC through TARP's Auto Industry Financing Program ("AIFP"), continuing to justify its necessity because of GMAC's ties to GM and the auto industry. However, Treasury's rescue of GMAC was markedly different from the other auto bailouts because GMAC was the only company in the auto bailout whose business extended beyond the auto industry. GMAC was one of the nation's largest subprime mortgage lenders. Taxpayers were not just bailing out an auto finance company, they were bailing out one of the nation's largest lenders of subprime mortgages.

GMAC's TARP assistance was also markedly different because Treasury never required GMAC to submit a viability plan outlining how it would resolve substantial liabilities that led to historic losses. Treasury required GM and Chrysler to submit viability plans and quickly planned for Chrysler Financial Services Americas LLC's liquidation. Treasury's lack of a plan that would address the subprime mortgage component going into the GMAC investment may be the primary reason why still today, four years later, GMAC, now rebranded as Ally, remains in TARP. By continuing to stand behind GMAC and provide repeated bailouts of a subprime lender, Treasury underlined the moral hazard encompassed in TARP – GMAC was too big to fail.

Although the Federal Reserve Board ("Federal Reserve") required some restructuring of GMAC as a bank holding company, which was agreed to by Treasury, neither it nor Treasury addressed GMAC's subprime mortgage liabilities through its subsidiary Residential Capital LLC ("ResCap"), where most of its losses occurred. By not working to fully restructure Ally and ResCap, as it did with GM and Chrysler, Treasury was merely postponing the resolution of the company's substantial mortgage liabilities, and finally in 2012, ResCap filed bankruptcy.

Taxpayers invested in GMAC because of its auto financing business, but GMAC also has used TARP funds to cover losses in its subprime business. Because of ResCap's losses and other issues, GMAC/Ally has failed Federal Reserve stress tests designed to gauge financial stability, resulting in the Federal Reserve requiring GMAC to raise additional capital. The company did so largely through three taxpayer-funded TARP injections totaling $17.2 billion, of which the Office of Management and Budget estimates taxpayers will lose $5.5 billion.[1] Ally has repaid

[i] SIGTARP is issuing this report under the Emergency Economic Stabilization Act. The report is based on publicly available information. It is not an audit or evaluation under the Inspector General Act of 1978 as amended.

only $2.5 billion in principal.[ii] Other subprime mortgage companies failed without receiving TARP funds. The Federal Government has sanctioned Ally for improper mortgage foreclosure practices at ResCap, requiring Ally to pay $316.6 million while being 74% owned by taxpayers. Ally's CEO Michael Carpenter called ResCap a "millstone" around Ally's neck, and it seems that ResCap also has become a millstone around taxpayers' necks.

By failing to have required a fully developed viability plan as a condition of TARP, Treasury missed an opportunity to address GMAC's mortgage issues, thereby better protecting the taxpayers' investment and promoting GMAC's financial stability. Ally's path to exit TARP now must include a resolution of issues related to the mortgage liabilities, which should have been addressed when Treasury first invested or preceding its subsequent investments. According to Treasury, its exit strategy for its investment in Ally initially encompassed the launching of an initial public offering of stock. That plan has been sidelined. While Treasury has noted that it has several options for possible divestment, including a public or private sale of stock or other sale of Ally assets, Treasury has not decided which of these exit paths to take. Treasury must exercise great care and coordination with the Federal Reserve in developing a more concrete TARP exit plan for Ally that takes into account the need to maintain Ally's financial stability. It is essential that when the Government finally exits Ally that it do so forever.

GMAC EXPANDS FROM AUTOS TO SUBPRIME MORTGAGES PRIOR TO THE TARP BAILOUT

Founded as a wholly owned subsidiary of GM in 1919 to provide auto loans to consumers buying GM cars and loans to GM auto dealers buying cars for their lots, GMAC became one of the world's largest automotive financing companies and was a dependable source of profit for its parent, GM.[2] For years, GMAC had a strong credit rating that allowed it to get capital at very low rates. GMAC's auto dealer financing was profitable with low risk because cars served as collateral for the dealer loans and the GMAC loans typically required GM to repurchase cars that remained unsold after a certain amount of time.[3] GMAC's loans to consumers who bought a GM car also were generally profitable, with the majority of GMAC's auto loans considered "prime loans," meaning that GMAC loaned money to customers with high credit scores.[4]

From 1985 to 2005, GMAC aggressively expanded into loaning home mortgages that were considered subprime.[iii] Although there is no one definition of subprime loans, they are generally considered to be loans to customers with low credit scores. Subprime loans carry risk of delinquencies and defaults. GMAC's subprime mortgage business was profitable for years. In 2004, as the housing

[ii] Ally has also paid $2.9 billion in quarterly dividends to Treasury through December 31, 2012, as required by the terms of its preferred shares. Treasury received $251.9 million in dividends on its Ally trust preferred securities when they were sold in early 2011.

[iii] In 1985, GMAC acquired Colonial Mortgage Services and the mortgage servicing platform of Norwest Mortgage Inc. ResCap, S-4, 7/15/2005, p.65, www.sec.gov/Archives/edgar/data/1145701/000095012405004263/k96200sv4.htm, accessed 1/8/2013.

market peaked, mortgage lending and servicing (collecting mortgage loans owned by others) helped boost GMAC's net income to a record $2.9 billion.[5] The following year, GMAC organized all its mortgage operations under a new holding company, Residential Capital, LLC. In addition to ResCap making, purchasing, selling, and servicing residential mortgages, it also securitized residential mortgages, meaning it converted loans into bundled assets for investors to purchase.[6] ResCap's 2005 net income surpassed GMAC's auto lending net income.[7] That same year, GM began losing billions of dollars as it struggled with high costs and weak sales of new cars.[8]

By 2006, GMAC was the nation's 10th largest mortgage producer, originating nearly $162 billion in home loans.[9] On November 30, 2006, facing more losses in its auto sales business, GM spun off a controlling interest in GMAC (a 51% interest) to an investor group led by the private equity fund Cerberus Capital Management L.P. ("Cerberus") for $7.4 billion as a way to preserve GMAC's own credit ratings, which were crucial to support its lending to GM dealers.[10] GMAC continued to provide loans to GM auto dealers.[iv]

But in 2007, losses at ResCap brought GMAC down from its 2006 profits to significant losses. GMAC reported a 2006 profit of $2.1 billion, then in 2007 reported a loss of $2.3 billion.[11] In its 2007 annual report, GMAC reported that its losses reflected the adverse effects of the disruption in the mortgage, housing, and capital markets on ResCap, as well as lower gains on GMAC's insurance business, which more than offset the strong performance of its auto financing business.[12] GMAC further stated that ResCap's losses came from increases in delinquent loans and deterioration in the securitization and residential housing markets. GMAC reduced ResCap's workforce and restructured the unit in 2007, announcing in its end of the year annual report that GMAC was investigating various strategic alternatives including acquisitions, dispositions, alliances, and joint ventures related to all aspects of the ResCap business.[13]

In the third quarter of 2008, GMAC lost $2.5 billion, "primarily attributable to a significant loss at" ResCap.[14] GMAC restructured ResCap in that quarter, cutting 4,800 jobs, closing all GMAC mortgage retail offices, ceasing making certain loans, and selling GMAC Home Services business.[15] GMAC forgave $101.5 million in debt owed by ResCap, and forgave $95.3 million owed on ResCap notes held by GMAC.[16] When 2008 ended, ResCap had lost nearly $10 billion over eight quarters, prompting GMAC to warn, "there remains substantial doubt about ResCap's ability to continue as a going concern without the support of GMAC."[17]

GMAC's historically profitable auto finance business lost $2.1 billion in 2008, its first and only annual loss in the company's history. The loss was driven by writedowns on car leases, an increase in credit reserves, weaker consumer and dealer credit performance, and lower car sales.[18] Due to this credit crisis, GMAC decided to create constraints on its loans — lending only to those with strong credit scores of 700 or higher. But those constraints lasted only two months, and on

[iv] Cerberus is a private equity fund that manages $20 billion in assets. The firm specializes in buying distressed companies, restructuring their finances, and then selling all or part of them for a profit. In addition to GMAC, Cerberus also controlled Chrysler and its auto finance unit, Chrysler Financial, at the time that they received TARP bailouts. Cerberus Capital Management, L.P., "The Firm," www.cerberuscapital.com/the_firm, undated, accessed 1/22/2013.

December 30, 2008, just days after receiving $5 billion in TARP funds, it cut the minimum credit score for borrowers to 620.[19]

TREASURY'S MULTIPLE TARP BAILOUTS OF GMAC RESULTED IN TAXPAYERS OWNING AN INCREASING PERCENTAGE OF GMAC

In a Coordinated Federal Rescue, Treasury Bails Out GMAC With TARP Funds Because of its Ties to GM

Despite GMAC's significant losses from ResCap's subprime mortgage business, it was its auto financing for GM that would lead the Government to bail it out. In November 2008, the CEOs of GM, Chrysler, and Ford Motor Co. testified before Congress requesting Government assistance, saying that at stake was consumer confidence in the entire U.S. auto industry, as well as millions of jobs that were directly or indirectly linked to all three Detroit carmakers.

After several weeks of private talks among GMAC, Federal regulators, and Treasury, a coordinated Government rescue moved forward. GMAC announced on November 20, 2008, that it had applied to the Federal Reserve to reorganize itself as a bank holding company, based on its ownership of online bank GMAC Bank.[20] GMAC simultaneously applied to Treasury for TARP money.[21] As a bank holding company, GMAC would be eligible to apply for Government assistance from the Federal Reserve's discount window, the Federal Deposit Insurance Corporation's ("FDIC") Temporary Liquidity Guarantee Program ("TLGP"), and from TARP's Capital Purchase Program ("CPP"), the program in which Treasury was injecting capital into banks.

GMAC's application for TARP funds was conditioned on it becoming a bank holding company. In order for GMAC to become a bank holding company, the Federal Reserve required that GMAC raise capital levels (consisting of cash and stock) to $30 billion to absorb losses and that GMAC convince 75% of bondholders to exchange their notes for discounted preferred stock that would count as capital.[22] GMAC repeatedly extended the debt exchange deadline as it sought to persuade enough bondholders to participate. According to press reports, some big bondholders balked, saying they would not participate unless Cerberus first injected more money into GMAC.[23]

On December 19, 2008, the President announced $13.4 billion in TARP aid for GM and Chrysler, and that each had until February 17, 2009, to submit a viability plan. The viability plan was a strategic plan for long-term profitability that included concessions from employees, suppliers, creditors, and dealers.[24] A White House fact sheet stated, "Taxpayers will not be asked to provide financing for firms that do not become viable."[25]

In a coordinated Federal rescue, five days after the GM and Chrysler TARP bailouts, in a rare split vote of 4-to-1, the Federal Reserve approved GMAC's bank holding company application. The Federal Reserve declared that "emergency conditions" existed and that "the proposal would benefit the public by strengthening GMAC's ability to fund the purchases of vehicles manufactured by GM and other companies and by helping to normalize the credit markets for such purposes."[26] The Federal Reserve ordered GMAC to boost its capital by raising $7 billion of new equity. Treasury directly supplied $5 billion of that in TARP funds.

Although the Federal Reserve required that GMAC make some changes to its capital structure and its corporate structure in order to meet the regulatory requirements for bank holding company status and Treasury agreed with these changes, this requirement did not address ResCap's mortgage liabilities or other issues. Treasury's stated purpose for providing the TARP money (in exchange for preferred stock) was GMAC's importance to the auto industry.[27] Even as the Government required that in exchange for TARP money, the automakers GM and Chrysler plan how they would become financially viable, Treasury rescued GMAC with TARP funds with no viability requirement that would address the mortgage liabilities. Treasury's initial $5 billion direct investment in GMAC had no strings attached for a plan to ensure repayment of taxpayers' investment.

Although GMAC had applied for TARP money from CPP, Treasury instead tapped TARP's Automotive Industry Financing Program ("AIFP") to provide the bailout funds. "Because the finance companies serve as the lifeblood of the automakers, we knew that our program would need to address the short-term needs of the auto finance companies as well," Assistant Secretary for Financial Stability Neel Kashkari, who led TARP, said at the time.[28] In addition to the direct cash injection to GMAC, Treasury loaned GM $884 million of TARP money so it could invest in GMAC's stock. Cerberus invested $366 million in GMAC stock.[29]

According to officials of Treasury's Auto Team, which formed later, in February 2009, by late 2008 American auto companies lost sales of an estimated 2 million to 2.5 million vehicles because neither dealers nor customers could obtain credit.[30] Steven Rattner, the head of Treasury's Auto Team, described in his book, *Overhaul*, that GMAC and Chrysler Financial depended on being able to borrow from banks, and the credit crunch had curtailed this source of funding.[31] According to Rattner, another source of funding had been cut off – securitizations – loans to consumers and dealers that were "bundled, sliced like a layer cake, and sold off in tranches, typically to investment funds."[32] Accordingly, Rattner explained, as a result, GMAC and Chrysler Financial "had drastically reduced lending to consumers and dealers, a major factor in the steep falloff of car sales."

Treasury Bails Out GMAC With TARP Funds a Second Time After GMAC Fails Stress Test, With Taxpayer Ownership of GMAC Increasing to 35%

In February and March 2009, two key Federal efforts were happening simultaneously that would lead to a second TARP bailout for GMAC. Treasury's recently constituted Auto Team under the new Administration was assessing GM's and Chrysler's viability plans, and the Federal Reserve and other regulators were conducting bank stress tests. In the wake of the financial crisis, the Federal Reserve was examining whether the 19 biggest bank holding companies, including GMAC, could survive a stress environment. Specifically, the Federal Reserve was determining whether the companies had enough capital "to withstand a 'bad state of the world' scenario."[33]

At the end of the first quarter, Treasury rejected viability plans submitted by GM and Chrysler, stating that, companies "may well require utilizing the bankruptcy code in a quick and surgical way."[34] Treasury's Auto Team began planning for Chrysler's bankruptcy. The Auto Team soon realized that a Chrysler bankruptcy would have severe consequences on Chrysler Financial's ability to obtain bank credit.[35] According to Rattner, GMAC's CEO Alvaro de Molina suggested that GMAC take over loans to consumers and auto dealers for new Chrysler cars.[36] Although, according to Rattner, de Molina "had his own agenda," that is what Treasury did.[37] When Chrysler filed for bankruptcy to reorganize itself on April 30, 2009, GMAC announced it would replace Chrysler Financial in providing Chrysler dealers with inventory financing and would lend money to consumers to buy Chrysler vehicles.[38] However, even with GMAC's conversion to a bank holding company and the infusion of $5 billion from Treasury, and the $884 million TARP-funded infusion from GM, GMAC began 2009 with a first-quarter loss of $675 million, deeper than its loss in the same quarter one year earlier.[39]

On May 7, 2009, the Federal Reserve announced the results of the stress tests. The test found that under the worst-case economic scenario, 18 of the 19 banks would have capital buffers of various sizes available to help absorb losses, with only GMAC having a shortfall.[40] The Federal Reserve ordered 10 banks to raise capital by November 2009, including GMAC, which was instructed to raise $9.1 billion in Tier 1 capital, the capital considered by regulators to cushion losses the best.[41] During this period of time, GM was planning for a potential bankruptcy.[v]

Already a $5 billion direct investor in GMAC, Treasury once again agreed to a TARP bailout of GMAC of an additional $7.5 billion on May 21, 2009, and indicated a willingness to provide even more capital if needed. However, with the results of the stress tests, Treasury stipulated that subsequent TARP investments would be contingent on the Federal Reserve approving a capital plan to address its concerns, and a liquidity plan if necessary. Of this $7.5 billion investment, $4 billion would be used to support GMAC taking over Chrysler loans and $3.5 billion would help GMAC address its capital shortfall requirements arising from the stress test.[42] "A recapitalized GMAC will offer strong credit opportunities, help stabilize our auto financing market, and contribute to the overall economic recovery," Treasury Secretary Timothy F. Geithner said.[43] Treasury received a type of preferred stock that could convert to common stock. This type of stock would count toward GMAC meeting the stress test requirement.[vi] Treasury also exercised its right to

[v] GM filed for Chapter 11 bankruptcy relief on June 1, 2009.
[vi] In return for its investment, Treasury received $7.5 billion in mandatorily convertible preferred stock ("MCP") paying a 9% dividend, and warrants for $375 million more of MCP, which it immediately exercised.

appoint two directors to GMAC's board.[vii] Additionally, Treasury exchanged the $884 million loan it had made to GM to purchase GMAC stock into a 35.4% common stock ownership of GMAC.[44] This marked the first time that Treasury would have a common stock equity ownership in a privately held company, GMAC. Treasury through TARP owned a common stock equity ownership in Citigroup, Inc., but Citigroup was a public company whose stock traded on a public exchange.

The second TARP bailout was again a coordinated Federal rescue of GMAC among the Federal Reserve, Treasury, and the FDIC, which gave GMAC access to the FDIC's TLGP to issue up to $7.4 billion in new FDIC-guaranteed debt.[45]

Treasury Bails Out GMAC With TARP Funds a Third Time After GMAC Fails to Meet Capital Requirements of Stress Tests, With Taxpayers' Ownership of GMAC Increasing to 56%

It was not long before GMAC turned to Treasury for help again. Of the 10 companies ordered by the Federal Reserve to raise capital by November 9, 2009, GMAC was the only one that failed to fully boost its loss-absorbing capital buffer by the deadline.[viii] In GMAC's case, after weeks of discussions among GMAC, the Federal Reserve, and Treasury, on December 30, 2009, Treasury announced a third TARP bailout from AIFP of $3.8 billion to meet GMAC's capital requirement stemming from the stress test. Of the 10 bank holding companies that had failed the Federal Reserve stress test earlier in the year, Ally was the only one that received an extension of time and a reduction in how much capital it was required to raise.[46] The amount was reduced from an earlier gap of $5.6 billion, Treasury said, because of lower than expected losses related to GM's bankruptcy filing.[47]

The third rescue package was more complicated than the previous ones. Treasury restructured its earlier aid, converting $3 billion in securities it had received in the second bailout into common stock to improve GMAC's quality of the capital. This increased Treasury's common stock ownership of GMAC from 35.4% to 56.3%. Treasury also invested an additional $3.8 billion in TARP funds in GMAC, receiving additional securities in return.[ix] The bigger ownership stake gave Treasury the right to select two additional GMAC directors, for a total of four on the company's nine-member board.

[vii] Treasury chose Robert Blakely, the former chief financial officer of Fannie Mae, and Kim Fennebresque, a Wall Street investment banker, both of whom remained board directors as of December 31, 2012. Ally, Board of Directors, undated, media.ally.com/index.php?s=52&item=122, accessed 1/15/2012.

[viii] The other banks sold assets, cut dividends, issued new common shares, or converted existing preferred shares to common shares. FRB Press Release, untitled, 11/9/2009, www.federalreserve.gov/newsevents/press/bcreg/20091109a.htm, accessed 1/22/2013.

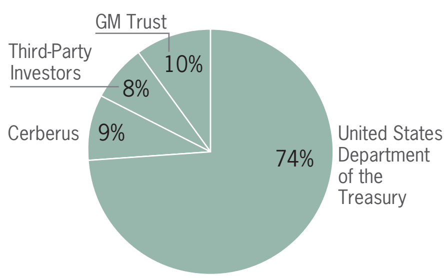
[ix] $2.54 billion of Trust Preferred Securities ("TRUPs"), a hybrid debt security senior to all other GMAC capital securities, and $1.25 billion in MCP securities. Treasury Press Release, "Treasury Announces Restructuring of Commitment to GMAC," 12/30/2009, www.treasury.gov/press-center/press-releases/Pages/tg501.aspx, accessed 1/22/2013. Treasury also received $127 million in warrants to purchase TRUPs and $63 million in warrants to purchase MCPs, all of which were exercised immediately. Treasury added a "reset" feature to allow a 2011 adjustment of the conversion price under which its MCP could be converted into common shares, if beneficial to taxpayers.

GMAC Rebrands as Ally Financial; Treasury Converts Securities to Common Stock, With Taxpayers' Ownership of GMAC Increasing to 74%

GMAC, including its troubled ResCap group, in early 2010 reported its first quarterly profit since Treasury's infusion of cash, but Treasury continued to increase taxpayers' ownership in GM, propping up the company's capital structure. In May 2010, GMAC rebranded itself as Ally Financial Inc. Ally's CEO testified before the Congressional Oversight Panel that the company was abandoning the name GMAC and focusing on the Ally Bank name because Chrysler dealers would not like doing business "on GM paper."[48]

Treasury converted nearly half of its preferred shares ($5.5 billion worth) into Ally common stock on December 30, 2010, with three direct results.[49] First, it increased taxpayers' common stock ownership of Ally to 73.8%.[x] Second, the conversion increased Ally's proportion of common stock, which bank examiners consider the most desirable form of regulatory capital to absorb potential losses. Third, the conversion removed Ally's obligation to pay Treasury about $500 million each year in dividend payments because the common stock carried no dividends.[xi] According to Treasury, the conversion simplified any future efforts on the part of Treasury to reduce its investment in Ally through the sale of its common stock.[50] However, Ally's common stock was not, and still is not, publicly traded. It was then, and still is today, a privately held company. For Treasury to sell its common stock on the public markets, Ally would need to conduct an initial public offering. Figure 3.1 summarizes the breakdown of common equity ownership in Ally as of December 31, 2012.

Figure 3.1
OWNERSHIP IN ALLY FINANCIAL/GMAC



Notes: Numbers may be affected due to rounding. Treasury owns 73.8% of Ally's Common Stock (981,971 shares), and $5.9 billion in preferred securities that automatically convert to Common Stock after 7 years.

Source: Ally Financial, Inc.: "Ownership Structure," http://media.ally.com/index.php?s=51, accessed 1/4/2013.

ALLY'S AUTO FINANCING AND BANKING BUSINESS

Ally's online banking business has grown rapidly since it became a bank holding company. Assets at Ally Bank, which does all its business via the Internet or telephone, have more than tripled since 2007 and reached $92.8 billion as of September 30, 2012, or half of Ally's companywide assets of $182.5 billion.[51] In the final quarter of 2012, Ally Bank repaid all $7.4 billion in debt that it had issued under the FDIC's Temporary Liquidity Guarantee Program.[52] Ally Bank also holds some mortgage loans and servicing rights, not included in ResCap's bankruptcy reorganization, and said it plans to continue originating what it described as a "modest" number of residential jumbo mortgages for its own portfolio.[53]

x Treasury also owned $5.9 billion in MCPs and $2.7 billion in TRUPs.
xi With its larger ownership interest, Treasury gained the right to appoint a total of six directors on Ally's expanded 11-member board, which Treasury has done. Ally Board of Directors Governance Policy, www.ally.com/files/pdf/policies-charters/ally-risk-board-of-directors-governance-policy.2010-05-01.pdf, 5/1/2010, accessed 1/22/2013. Treasury appointed its fourth member to the Ally board of directors, John Durrett, a strategic adviser to private equity firm Serent Capital, in February 2011. More than 18 months after it was given the right to fill the fifth and sixth seats on Ally's board, Treasury in August 2012 finally chose Henry Miller, a Wall Street restructuring expert, and Gerald Greenwald, a former chief executive at United Airlines. Treasury Press Release, "Treasury Names Appointee to Ally Board of Directors," 2/28/2011," www.treasury.gov/press-center/press-releases/Pages/tg1080.aspx, accessed 1/22/2013. Ally Press Release, "Ally Financial Announces John D. Durrett to the Board of Directors," 2/28/2011, media.ally.com/index.php?s=43&item=447, accessed 1/22/2013. Treasury Press Release, "Treasury Names Appointees to Ally Board of Directors," 8/15/2012, www.treasury.gov/press-center/press-releases/Pages/tg1682.aspx, accessed 1/22/2013.

Ally's auto financing relationship with its former parent has changed during the past four years. In 2010, GM bought subprime lender AmeriCredit Corp. for $3.5 billion to set up a new U.S. auto financing arm that could also offer car loans to consumers with non-prime credit scores.[54] At the end of 2013, Ally faces the expiration of a key lending agreement with GM, in which the automaker currently subsidizes car loans made by Ally to offer cheaper financing on new GM cars to consumers.[55] Loans under the GM contract represented about 18% of Ally's total U.S. loan origination volume in the second quarter of 2012, down from 80% five years ago, according to Fitch Ratings.[56] In the international market, GM will no longer depend upon Ally for support once it completes its $4.2 billion purchase of Ally's auto finance operations in Europe, Latin America, and China.[57] The sale agreement was announced by Ally on November 21, 2012, and is subject to regulatory approvals. "Both Ally and GM have been trying to diversify away from each other – GM through buying AmeriCredit (now GMF) and Ally by transforming itself to a more market-driven independent auto finance company, with increased share with other auto manufacturers and greater presence in the used car financing business," Fitch said.[58]

Ally's anchor business, auto financing, is facing more competition from traditional banks looking for new sources of profits. Wells Fargo & Company climbed ahead of Ally to become the biggest lender for both new and used vehicles in the third quarter of 2012, according to Experian Information Solutions, Inc., which tracks the auto financing sector.[59] Wells Fargo ranked No. 1 with 5.9% of the fragmented market for consumer auto loans, followed by Ally with 5.5%, Toyota with 5.1%, JPMorgan Chase with 4.9%, and Capital One with 3.8%. In 2011, Ally was the largest independent provider of new retail auto loans, funding one out of every 10 new car purchases as it originated $43.8 billion in consumer car loans in North America, Ally said.[60] On the dealer side, during the first half of 2012 Ally financed $30.2 billion of auto dealers' vehicles and claimed 72% of GM's and 59% of Chrysler's total new North American dealer vehicles.[61] In April 2012, Chrysler notified Ally that it would not renew past April 2013 a preferred financing contract that provided subsidies for certain consumer loan discounts, a business that accounted for 6% of Ally's total U.S. consumer loan originations in the first quarter of the year.[62] In January 2013, Ally securitized $940 million in non-prime auto loans, its first sale of such loans in several years.[63]

TAXPAYER BAILOUTS DID NOT RESOLVE MORTGAGE LIABILITIES

Treasury Did Not Require GMAC to Submit a Viability Plan to Resolve Mortgage Liabilities

Treasury did not require GMAC to produce a viability plan to resolve its mortgage liabilities. In comparison, the other auto industry companies that received TARP funds through AIFP were required to submit a viability plan. In comparison, in early 2009, GM had already made public a 117-page plan that laid out data and specific estimates about how it would cut costs at its plants, eliminate jobs, shrink its network of auto dealerships, renegotiate its labor union agreements, and win bondholders' participation in a debt exchange.[64] The Government rejected the plan as submitted, but some elements formed the basis for GM's pre-packaged Chapter 11 bankruptcy reorganization, filed June 1, 2009.[65]

GMAC in 2008 was pursuing funding through TARP's bank program, CPP. As a condition of approving GMAC as a bank holding company and subsequently during the stress tests, the Federal Reserve required the company to undergo some changes.[66] However, these restructuring changes were required to bring GMAC into compliance with Federal Reserve requirements and requirements for the stress tests. Treasury's third infusion of TARP funds was contingent on GMAC receiving Federal Reserve approval for capital plans, and if separately addressed, liquidity plans connected with stress tests.[67] However, the stress tests were focused mainly on capital. Without a plan for GMAC's future viability, taxpayers were investing without a clear business path for things beyond capital, including operating needs, expenses, reductions, growth projections, and profitability of the company. Most importantly, without a viability plan there was no early assessment of how to best address the problematic liabilities and what later became enforcement issues related to GMAC's subprime mortgage arm.

GMAC's size placed it in a group of 19 largest bank holding companies, those with more than $100 billion in assets, subjecting it to Federal Reserve stress tests, which GMAC has repeatedly failed because of ResCap issues.[68] The Federal Reserve also required GMAC to address concerns about its ownership by a private equity firm as well as its commercial, non-banking activities.[69] Because Cerberus and GM had large business interests outside the banking industry, the Federal Reserve required each to sharply reduce their ownership stakes in GMAC.[xii] The Federal Reserve also forced GM to modify various auto financing exclusivity arrangements and incentives it had set up with GMAC after selling a majority stake to Cerberus in 2006.[70] To ensure GMAC's independence as a bank holding company, the Federal Reserve halted Cerberus' practice of sharing employees and consultants with GMAC.[71] The Federal Reserve gave GMAC three months to reconstitute its board of directors with two directors appointed by the Treasury

[xii] Cerberus was ordered to cut its ownership from 51% to less than 15% of GMAC's voting shares by distributing equity interests to its investors. GM was instructed to reduce its 49% stake to less than 10% by transferring shares to an independent trust, which would be managed by Treasury-appointed trustees who could take up to three years to sell the shares.

trust; one appointed by Cerberus; three independent directors; and GMAC's chief executive officer.[72]

Taxpayers Fund Ally's Subprime Mortgage Business—With Ally's CEO Describing it as the Millstone Around Ally's Neck

While the bailout of GMAC was described from the start by Treasury as necessary to save the auto industry, Ally also used TARP money for its subprime mortgage business. In response to a SIGTARP survey in 2009, Ally told SIGTARP that it used TARP money to "make auto loans, provide dealer financing, and modify home loans."[73] According to Ally, $1.3 billion in TARP funds went to Ally Bank for its "higher risk" mortgages. Ally also made a $2.8 billion capital contribution in December 2009 to prop up ResCap with a combination of cash, debt forgiveness, and mortgage loan purchases.[74] Ally said in a press statement, "Following these transactions, GMAC does not expect to incur additional substantial losses from ResCap and will be better positioned to explore strategic alternatives with respect to mortgage operations."[75] That turned out not to be true.

The Congressional Oversight Panel ("COP") wrote in March 2010 that ResCap's "ongoing existence and viability have remained highly doubtful without continued contributions from its parent. GMAC's contributions to ResCap would not have been possible, however, had GMAC not received TARP assistance."[76] Ally's CEO Carpenter testified before COP on February 25, 2010, "For GMAC, over the last several years, [ResCap] has been what I have described publicly as a millstone around the company's neck. It has been the single-greatest barrier to the company's access to the capital markets, it has been the greatest barrier on our profitability as an enterprise."[77]

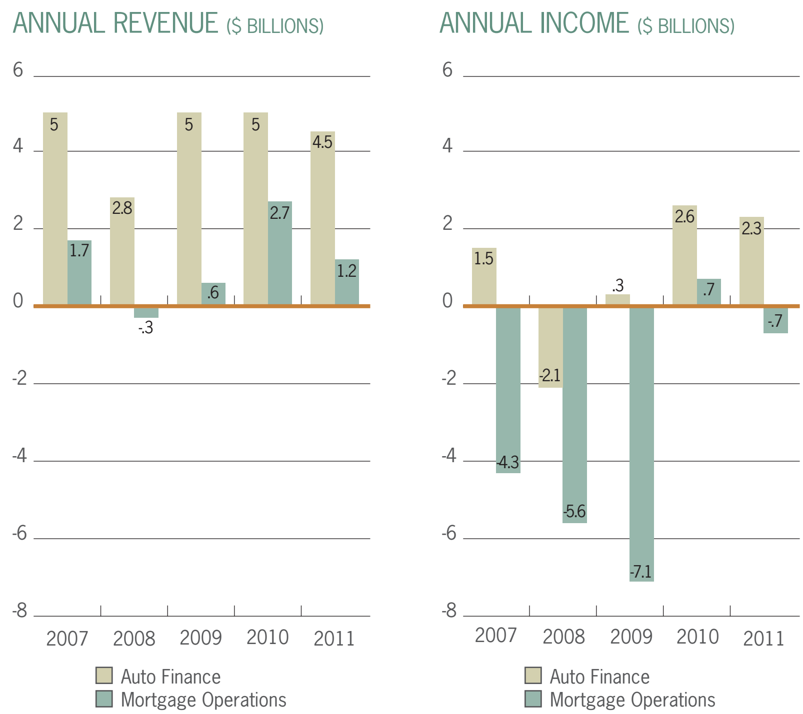
For years, ResCap had drained its parent's resources. Unlike Ally's auto finance unit, which lost money in only one year during its nearly 100-year history, ResCap had soaked up more than $8.5 billion of Ally capital contributions since 2007 in various forms of cash, debt forgiveness, and purchases of ResCap loans and assets.[78] ResCap had been slow to write down the balance sheet value of its distressed home loans to a level low enough to sell them to buyers. At the same time, ResCap's losses totaled $17.8 billion since 2007.[79] Figure 3.2 summarizes the financial performance of Ally's automobile finance and mortgage operations since 2007.

In early 2011, the Federal Reserve completed another round of stress tests on major bank holding companies including Ally, and although the results were not made public, the Federal Reserve ordered Ally to "make improvements" in areas including its capital adequacy process, regulatory reporting, risk management, and board and senior management oversight.[80] In Ally's 2010 annual report filed in early 2011, Ally reported that banking supervisors instructed Ally to reduce its problem assets and to improve aspects of its home mortgage business.[xiii]

[xiii] The improvements were to be in the areas of loan pricing, consumer complaint resolution, internal audits, and fee monitoring. Ally, 10-K, 2/25/2011, p.13, www.sec.gov/Archives/edgar/data/40729/000119312511047688/d10k.htm, accessed 1/22/2013.

FIGURE 3.2

AUTO FINANCE AND MORTGAGE OPERATIONS OF GMAC (REBRANDED AS ALLY)



ALLY CAPITAL CONTRIBUTIONS TO RESCAP, 2008-2012 ($BILLIONS)					
2008	2009	2010	2011	2012	**TOTAL**
$3.3	$4	—	$0.058	$1.2	**$8.6**

Note: Data is from GMAC/Ally 10-Ks, in the year it was reported. Subsequent adjustments may have been made in later corporate filings. The 2012 capital contribution includes $750 million Ally has offered to pay ResCap creditors to settle potential liabilities.

Ally has also been seriously sanctioned in a number of Federal actions for improper mortgage foreclosure practices. In 2010, Ally halted foreclosures in nearly two dozen states. A ResCap employee testified before Congress that some of its foreclosure affidavits were signed without a notary present and without direct personal knowledge of the information in the affidavit.[81] In October 2010, Ally paid $462 million to Fannie Mae in a settlement to release its ResCap unit from any liability related to poorly underwritten mortgages sold to Fannie Mae. The agreement protected ResCap from the potential repurchase of $292 billion worth of loans it sold to Fannie Mae.[82] In early 2011, the Federal Reserve ordered Ally and nine other banks to halt what it described as “a pattern of misconduct and negligence” in mortgage servicing and foreclosure processing and subsequently sanctioned Ally $207 million for its conduct.[83] Soon afterward, on April 4, 2012, Ally agreed to pay $110 million and to provide $200 million in principal writedowns, refinancing, and other relief to borrowers in a “Robosigning

Settlement" with the Federal Government and 49 state attorneys general for improper foreclosures practices. The settlement cited a number of "deficiencies" in Ally's participation in TARP housing programs, its eviction notice and collections activities, and how it handled pooled mortgage loan insurance and guarantees.[84]

Ally failed another Federal Reserve stress test on March 13, 2012, with the weakest showing among the big bank holding companies tested.[85] ResCap clearly was a factor in Ally's failure to pass and the test concluded that if the economy dramatically worsened, Ally would fall short of the Federal Reserve's minimum capital ratio requirement of 5% Tier One common equity to risk-weighted assets.[86] Ally ranked last among the banks with a stressed ratio of 2.5%.[87] The company protested the test results, saying that the Federal Reserve's analysis "dramatically" overstated potential mortgage risk, ignored the contingent capital that already existed within Ally's capital structure, and did not reflect management's commitment to address its legacy mortgage risks.[88]

Soon afterward, on May 14, 2012, after $17.8 billion in mortgage-related losses since 2007, ResCap filed bankruptcy. "ResCap is one of the last subprime mortgage lenders of the early 2000s to file for bankruptcy," according to a report from Moody's Analytics.[89] Other subprime lenders failed or filed bankruptcy; none of them were bailed out by the Government through TARP. Ally's CEO had previously stated that Ally's board had considered and rejected bankruptcy for Rescap.[90]

ResCap's bankruptcy did not eliminate Ally's potential mortgage obligations. As part of ResCap's bankruptcy filing, Ally eliminated ResCap from its own balance sheet and took a $1.2 billion charge-off. That charge-off included $220 million in loans to fund ResCap's bankruptcy and $750 million that Ally has offered to pay to ResCap creditors to settle potential mortgage liabilities upon the bankruptcy court judge's confirmation of ResCap's reorganization plan, which is scheduled to be submitted in April 2013.[91]

ALLY STILL OWES TAXPAYERS $14.6 BILLION AND TREASURY HAS NO CONCRETE TARP EXIT PLAN FOR ALLY THAT BALANCES REPAYMENT TO TAXPAYERS WITH ALLY'S FINANCIAL STABILITY

Four years after its first Government bailout, Ally still owes taxpayers $14.6 billion and Treasury has no concrete exit plan that balances repayment to taxpayers with Ally's financial stability. The financial stability of Ally must involve resolution of Ally's mortgage liabilities. Three times the Federal government injected billions of dollars into Ally and not once did it require the company to spell out a plan for resolving ResCap's issues. According to Treasury, it planned to exit its investment in Ally through a public sale of stock. On March 31, 2011, Ally filed for a proposed initial public offering that would allow Treasury to sell some of its common shares.[92] However, Treasury's initial plan was sidelined. In May 2012, when

ResCap filed for bankruptcy, Treasury stated that Ally's proposed initial public offering was delayed because of "intensifying issues" with ResCap's legacy mortgage liabilities.[93] Treasury now states that its exit plan includes the ResCap bankruptcy and Ally's sale of international operations – all of which occurred in 2012.[94] However, Treasury does not have a concrete plan for how to dispose of its shares in Ally after ResCap's bankruptcy.

As of December 31, 2012, of the $17.2 billion invested in TARP money in GMAC, taxpayers have received just one principal repayment in the amount of $2.5 billion, leaving $14.6 billion owed to taxpayers. That payment was received in March 2011 from the sale of certain securities. No other principal repayments have been made on the GMAC investment. Ally has paid preferred stock dividends to the Government totaling $2.9 billion over the years. In addition, Treasury received $251.9 million in dividends on its Ally trust preferred securities when they were sold in 2011. It is important to recognize that those payments are in addition to – not in place of – the TARP principal that taxpayers provided to Ally in 2008 and 2009.

However, taxpayer repayment is only one important factor, as financial stability is a crucial responsibility of Treasury. Treasury needs to develop a concrete plan to determine how to dispose of its Ally holdings, while promoting financial stability. Treasury and Ally have several options that, with approval by Federal Reserve regulators, can be used alone or in combination.

Ally Buys Back TARP Stock: At the end of the third quarter of 2012, Ally's most recently reported financial period, the company's assets totaled $182.5 billion.[95] The balance sheet assets included $17.2 billion in cash and cash equivalents. Proceeds of recently announced sales of $9.2 billion worth of international auto finance assets could be used to pay down Ally's TARP obligation.[xiv] The money raised from Ally's recent asset sales is also being sought by a group of ResCap unsecured creditors, who have questioned Ally's transfer of assets from ResCap before it filed for bankruptcy protection.[96]

Treasury Sells its Nearly One Million Shares of Common Stock: Treasury could sell its nearly one million shares of Ally publicly or in a private sale. In December 2010, Treasury Secretary Geithner testified before the Congressional Oversight Panel and was asked about GMAC and any TARP exit plan. He responded, "We are going to move as quickly as we can to replace the government's investments with private capital, take those firms public, figure out a way to exit as quickly as we can. And we're working very hard with the management and board of GMAC to achieve that outcome. I don't quite — I don't know how quickly, but it's going to be much sooner than we thought six months ago."[97]

Although Ally has returned to profitability, factors including ResCap's drain on company resources and Ally's latest failed stress test have postponed Ally's proposed initial public offering for 22 months.[98] The lack of publicly-traded shares makes it more difficult for Treasury to sell its shares on the public market. Moreover, Treasury cannot sell a 74% ownership stake consisting of nearly one million shares

[xiv] Ally announced sales to several buyers, including its former parent, GM. Ally press release, "Ally Financial Announces Agreement to Sell Remaining International Operations," 11/21/2012, media.ally.com/2012-11-21-Ally-Financial-Announces-Agreement-to-Sell-Remaining-International-Operations, accessed 1/22/2013.

of common stock quickly, and according to Treasury, it may need one to two years following an initial public offering to dispose completely of its ownership stake.[99]

Treasury's investment in Ally remains unresolved. The results of the Federal Reserve's next round of stress tests for the 19 biggest bank holding companies are scheduled to be made public in March 2013, and it is unknown how much cash the Federal Reserve will require Ally to keep on its balance sheet to meet regulatory capital requirements.[100] While repayment to taxpayers is a vital concern, Treasury must remain focused on keeping Ally financially stable. Taxpayers saved GMAC, and they should not be put in the position of needing to save the company again. Given the Federal Reserve's position that Ally cannot survive a stressed environment, and Treasury's historic position that Ally's failure could have a domino adverse effect on GM (which will remain in TARP for one or more years to come) and the auto industry, Treasury must take great care in its exit of its TARP investments in Ally to promote financial stability so that history does not repeat itself.

Treasury must work together with Federal banking regulators to develop a plan to exit Treasury's investment in Ally that includes the TARP program's objective of financial stability. That kind of cooperation took place in late 2008 when regulators put together a plan to recapitalize Ally. However, Treasury and Ally did not map out a clear path before any of the three infusions of TARP capital to address ResCap's liabilities. Instead, almost three and half years after the initial bailout, ResCap filed bankruptcy. In coordinated discussions, Treasury and the Federal banking regulators must now develop a path to repay taxpayers while leaving Ally (and GM and the auto industry) in a position of strength going forward.

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