



Understanding Mortgage Foreclosures: Trends and Policy Issues

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Promoting policies and practices that encourage
fair access to credit for low-wealth families

Durham, NC Washington, DC Oakland, CA

Self-Help



Creating and protecting ownership and economic opportunity for people of color, women, rural residents and low-wealth families and communities

Where are the foreclosures & risks?

■ What loans?

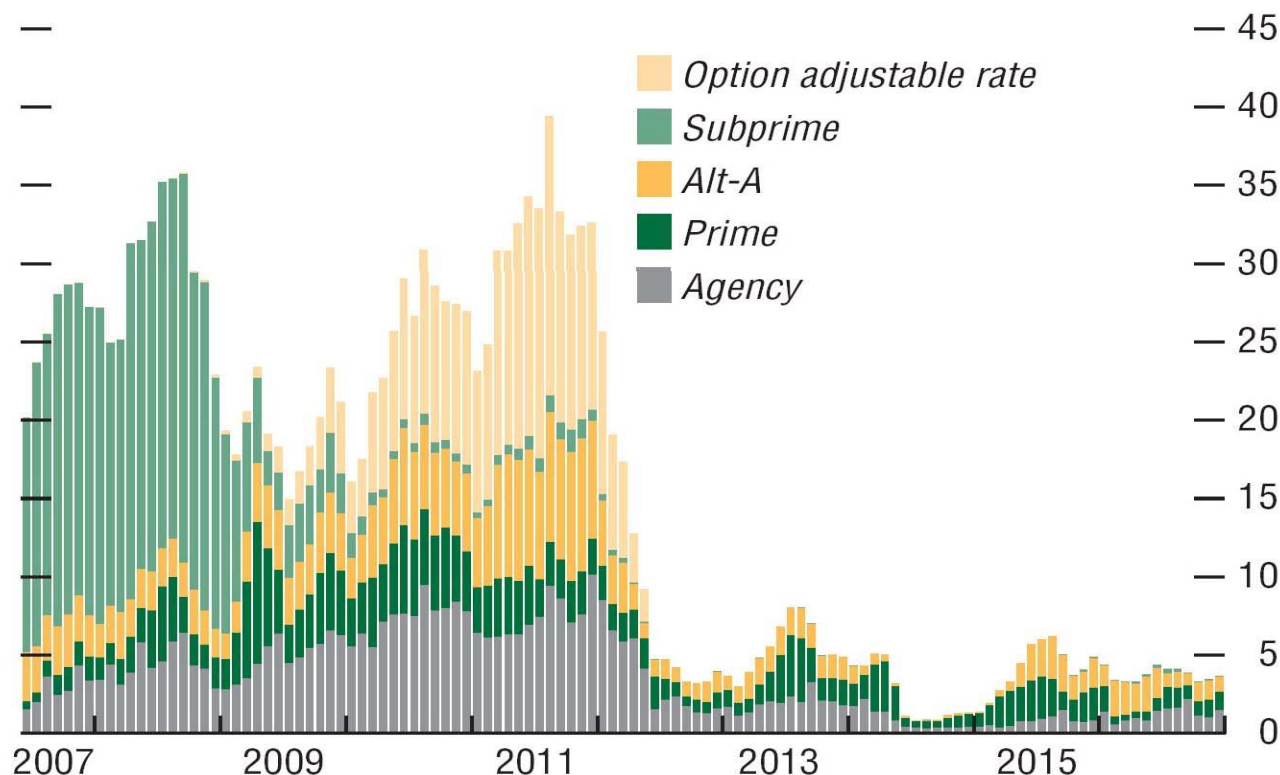
- *Subprime*: 14% of market, but 54% of foreclosures (MBA)
- *Nontraditional*: I/O & PO ARMs next wave; rising delinquencies & foreclosures

■ Where?

- Nevada, Florida, Michigan, California, Colorado, Ohio, Georgia, Arizona, Illinois and Indiana had the highest rates for 2007.
- California had highest number (filings on 249,513 properties)

2nd Wave of Alt-A & Option ARMs in 2009 - 2012

Figure 1.7. Monthly Mortgage Rate Resets
(First reset in billions of U.S. dollars)



Source: Credit Suisse.



Federal Reserve Proposed Rules

Federal Reserve Board Proposed Rules: Significant Limitations



- **Limited Scope:** Omits nontraditional loans (risky I/O & POARMs)
- **Unenforceable Ability to Repay Rules:** “Pattern or practice” standard is unenforceable and ineffective
- ***Extends* Prepayment Penalties:** Authorizes prepayment penalties of *up to 5 years*, when, in practice 90% have been 2-3 years
- **Yield-Spread Premium Roadmap for Abuse:** Require disclosure, not prohibition or limitation; shows lenders how to continue to use them

Verification of Income & Escrow: Two Steps Forward; Two Steps Back

- **Positive Steps Forward**
 - Requiring verification of income
 - Requiring escrow of taxes and insurance
- **Step Backward:** Rules don't apply to nontraditional loans
 - Included in *Interagency Guidance*
 - CA represents ~ 45% of nontraditional loans as of 3Q 2007 (~**57%** of all Payment Option ARMs)



State Efforts

State Efforts: Strong Action crucial given limitations of federal and voluntary efforts

- **California**
 - Non-Legislative Efforts
 - Governor's Agreement
 - DoC Data Collection
 - Proposed Legislation
 - Helping Current Borrowers
 - Reforming The System
- **Highlights From Other States**

CA's Non-Legislative Efforts

- **Governor's Agreement w/ Servicers**
- **DoC Data-Collection on Loan Modifications**
 - Limited success to date
 - foreclosures grew 50% from December to January while
 - modifications dropped 30% from November to January.
 - DoC data is not lender/servicer specific
 - Limits accountability

Helping Current Borrowers

- **SB 1137 (Perata): Foreclosure Process Reform**
 - Requires meeting between servicer and borrower
 - Extended tenant notification before eviction
 - \$1000/day fines for failure to maintain properties
- **AB 69 (Lieu): Servicer Data Collection**
 - Requires monthly reporting on loan defaults and loss mitigation efforts for subprime and nontraditional loans
 - Lender-specific reports will be publicly available

Preventing Future Problems: Comprehensive Predatory Lending Reform



What Market Failures Caused The Current Crisis?

- Increasingly loose or nonexistent underwriting standards
- Misplaced financial incentives that created conflicts between industry profits and borrowers' interests; and
- Lack of accountability of all industry players to borrowers.

Preventing Future Problems: Comprehensive Predatory Lending Reform



What Policy Solutions Are Needed To Prevent A Recurrence?

- Return to Common Sense Lending Practices
- Realign Financial Incentives With Borrower Interests
- Restore Accountability for Bad Loans Throughout the System

Preventing Future Problems: Comprehensive Predatory Lending Reform



Package of bills originating in the Assembly addresses needed market reforms

- AB 1830 (Lieu): Underwriting and Incentives
- AB 2880 (Wolk): Mortgage Brokers
- AB 2740 (Brownley): Mortgage Servicers
- AB 2359 (Jones): Accountability
- AB 512 (Lieber): Document Translation

AB 1830 (Lieu): Underwriting and Incentives

- **Ensures Lenders Apply Common-Sense Underwriting Standards to All Risky Loans**
 - Ability to Repay & Income Verification
 - Escrow
- **Creates New Rules to Align Market Incentives with Borrowers' Interests**
 - Yield Spread Premiums
 - Prepayment Penalties
 - Steering
 - Negative Amortization
 - Flipping
- **Expands Definition of Existing “High-Cost” Mortgage Loans**
 - Housing Counseling

AB 2880 (Wolk): Mortgage Broker Reforms

- **Creates New Rules to Align Broker Incentives with Borrowers' Interests**
 - Imposes broker duties
 - Bans the payment of broker kickbacks “yield spread premiums” and steering
- **Increases accountability of brokers**
 - Adds/increases broker bonding requirements
 - Increases administrative penalties
 - Provides civil liability to borrowers
- **Strengthens and makes consistent across licenses**

AB 2359 (Jones): Closes Accountability Loopholes

- **Increases Accountability for Bad Loans**
 - **Holder Liability:** Ensures that borrowers can defend against foreclosure and pursue other claims against the entity that owns their mortgage (purchasers are typically immune under current law)
 - **No Forced Legal Waivers:** Prevents lenders and brokers from forcing homeowners to accept involuntary waivers of their legal rights or remedies as part of the terms of the loan.

AB 2740 (Brownley): Mortgage Servicer Reforms

- **Creates Reasonable & Fair Standards**
 - Duty of good faith/fair dealing
 - Fees/charges
 - Payment posting
- **Prohibits Unfair/Abusive Practices**
 - Forced insurance
 - Improper fees
- **Prevents Unnecessary Foreclosures**

AB 512 (Lieber): Mortgage Document Translation



Translation of mortgage contracts:

- Closes loophole in contract translation law (Cal. Civil Code 1632)
- Requires that contracts by residential mortgage lenders be translated when negotiated primarily in Spanish, Korean, Chinese, Tagalog or Vietnamese
- Apply to lenders, in addition to brokers

What's Going On In The Other States?

- **Many States Already Stronger Than Fed Rules**
 - Ability to Repay Standards
 - E.g., ME, MN, MA, CO & OH require for *all home loans*.
 - Prepayment Penalties: ≥ 12 states have broad bans
 - NJ, NM, AL, VT *ban for all home loans*.
 - NC & MN *ban all subprime* prepayment penalties.
 - NC & SC: Bans for all home loans under \$150,000.
 - Yield Spread Premiums
 - AR, GA, IL, MA, ME, MN, NJ, NM, NY include in points/fees
- **Broker Duties Imposed**
 - 2006-07: AK, CO, IL, OH, MA, ME, MN, NC, WA, added through law or rulemaking

Interesting Developments

- **States considering foreclosure moratoriums**
 - Minnesota Subprime Foreclosure Deferment Act of 2008
 - New York proposed bill (1 year)
- **MN – banned negative amortization loans**
- **In the Courts**
 - MA Court enjoins foreclosures by Fremont Inv. & Loan
 - Challenges to standing (legal right) of foreclosing entity to foreclose

Contact



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