Aside from the number of foreclosures, credit rationing was one of the most obvious effects of the crisis on the housing market. Consumer credit for new mortgages soon became hard to find. At the peak of the last mortgage boom, in 2005, lenders originated over seven million purchase-money mortgages for the year. By 2008 that number had dropped to about three million, and it settled to a low of about two and a half million in 2011.

As one commentator explained, credit rationing was the lending industry’s response to the high foreclosure rate and its consequences for lenders:

> After taking record losses in the mortgage market meltdown, lenders . . . face[d] greater risk of having to buy back loans that default and of paying much higher servicing costs for delinquent borrowers. As a result, they . . . overlaid their own more stringent credit requirements with even stricter standards for borrowers.

But even after the economy began to improve, credit remained tight for all but the best applicants. As of 2013, purchase-money lending to applicants with low and even moderate credit scores was lower than in 2001. The share of purchase-money mortgage loan originations made to low-income and moderate-income borrowers rose to 28% by 2015, but that was still lower than it had been from 2009–2013. The total dollar volume of mortgage originations in 2014 ($1.24 trillion) was the lowest since 2000 ($1.048 trillion). Since then the number of originations has continued to climb, but lending to low-income and moderate-income borrowers and to all African-American and Hispanic borrowers remains depressed.

Overall, the foreclosure crisis caused a significant shift in the type of mortgages made, compared to pre-crisis lending. Subprime mortgages, for example, were common at the peak of the last boom, but most lenders have stopped making them since the crisis. According to the Mortgage Bankers Association’s National Delinquency Survey, nearly six million subprime mortgage loans were serviced at the end of 2006. But that dropped to 2.8 million at the end of 2015 and, in 2017, the Association dropped the category from the survey.

In contrast, from 2006 to 2015, the number of Federal Housing Administration insured loans increased from three million to 6.5 million. Fannie Mae and Freddie Mac also guaranteed roughly 60% of new mortgages made between 2008 and 2013.

Since at least 2014, nonbank lenders have begun to return to the market. For example, nonbank mortgage lenders represented almost half of all mortgage originations in 2016, up from twenty percent in 2007, and made almost half of all loans sold to Fannie Mae and Freddie Mac. Meanwhile, these lenders accounted for seventy-five percent of all FHA and VA insured loans in 2016. Nonbank mortgage lenders are more likely to originate loans to minority, lower-income, and lower credit-score borrowers. Researchers however remain concerned about the ability of nonbank lenders to weather future economic stresses that affect warehouse credit liquidity, because they possess minimal resources to continue generating originations.

Nonbank lender failures could become quite costly to the government given the extremely high share of nonbank lenders in the FHA and VA loan market.

Nonbank mortgage lenders have also returned to the market for riskier loans by making loans that do not meet the strict “qualified mortgage” underwriting standards set forth in the Dodd-Frank Act, including subprime loans. Wall Street investors, such as private equity firms, hedge funds, and mutual fund companies, are buying subprime, Alt-A, and interest-only loans and placing those loans into private funds that are sold to institutional investors and wealthy clients, thus creating a demand for these products. Several lenders reportedly are now offering higher loan-to-value ratio loans and low-credit score programs to target borrowers who have been unable to purchase a home. Other products, such as equity purchase contracts, also are appearing.

The Office of the Comptroller of the Currency (OCC) issued a bulletin in 2017 that discusses circumstances under which banks and savings associations may offer owner-occupied residential mortgage loans with loan-to-value ratios that exceed 100 percent at origination in communities targeted for revitalization. The bulletin describes the policies that banks must adopt related to underwriting, consumer notices, portfolio management, and other matters when commencing such a lending program.

In the current environment of heightened underwriting standards by conventional and government-insured lenders, the use of land installment contracts (also known as contracts for deeds) to sell homes is also on the rise. Land installment contracts are...
essentially a form of seller financing in which legal title remains in the seller’s name until all payments have been made. This type of contract is often described to low-income people as a way to acquire homeownership without needing to deal with a bank or get credit approval. But they subject buyers to considerably more risk than traditional mortgages because of the long delay in transferring legal title, and other abusive features.205

Footnotes


182 [182] Laurie Goodman, Jun Zhu & Taz George, The Urban Inst., The Impact of Tight Credit Standards on 2009–13 Lending [1] 5 (Apr. 2015), available at www.urban.org (according to Home Mortgage Disclosure Act (HMDA) data, first lien purchase loans peaked at 5.7 million in 2005 but dropped to 3.0 million in 2013. This was a 37% drop since 2001 and a 50% decline since the 2005 peak).

183 [183] Id.


185 [185] Id. at 23.


The terms “prime,” “subprime,” and “Alt-A” are defined in § 2.4 [2], infra.


194 [194] You Suk Kim, et al., Liquidity Crisis in the Mortgage Market [4], Brookings Papers on Economic Activity 3...
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195 [195] Id. at 3–4.

196 [196] Id. at 3–4.

197 [197] Id. at 52 (noting that the failure of these nonbanks would also have a disproportionate effect on lower-income and minority borrowers).

198 [198] Id. at 46 (discussing the problems for the GSEs and Ginnie Mae when nonbanks lenders retain the servicing rights and immediately stop functioning; “A servicer in financial distress is also a servicer that is more likely to take shortcuts in some of its operations, and remedying those deficiencies can be costly.”).

199 [199] Brad Finkelstein, Nat’l Mortgage News, Carrington to Start Offering Subprime Mortgages, www.nationalmortgagenews.com (Apr. 3, 2018) (describing Carrington Mortgage Services’ decision to enter the subprime market; its subprime program is aimed at borrowers with credit scores as low as 500; Carrington is a servicer and a large FHA and VA lender); Alexis Leondis & Jody Shenn, Bloomberg, Western Asset Bespoke Mortgages Feeding Non-Agency Demand [5], www.bloomberg.com (June 9, 2014) (identifying Caliber Home Loans, Inc. as one such lender). Cf. Rachel Witkowski, Underwriting Standards Loosened to Precrisis Levels, OCC Warns [6], Am. Banker, Dec. 9, 2015, available at www.americanbanker.com (noting Office of the Comptroller of the Currency’s concerns about more lax underwriting standards in the indirect consumer loan (bank loans to finance the purchase of goods) and credit card contexts).


205 [205] For an in-depth discussion of these contracts, see Ch. 10 [10], infra. A related transaction allows for some of the equity in the rented home to be applied to the down payment of the tenant-buyer so long as the tenant has paid rent on time for twenty-four consecutive months and is a first time home buyer. Laura Kusisto, New Mortgages Allow Renters to Buy with Tiny Down Payments, Wall St. J., Nov. 28, 2017.
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