In Conversation:

Systemic Risk & Amelioration

Best Practices for Teaching Real Estate Securitization

A Webinar Sponsored by

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Mark Adelson
Editor, Journal of Structured Finance
office: (646) 891-2159, cell (917) 882-0155
m.adelson@pageantmedia.com,
markadelson@nyc.rr.com,
www.pm-research.com, www.markadelson.com

Marissa Gluck
Associate, Paul Weiss Securitization Group
office: (212) 373-3349
mgluck@paulweiss.com
www.paulweiss.com

I. Residential Mortgage Meltdown

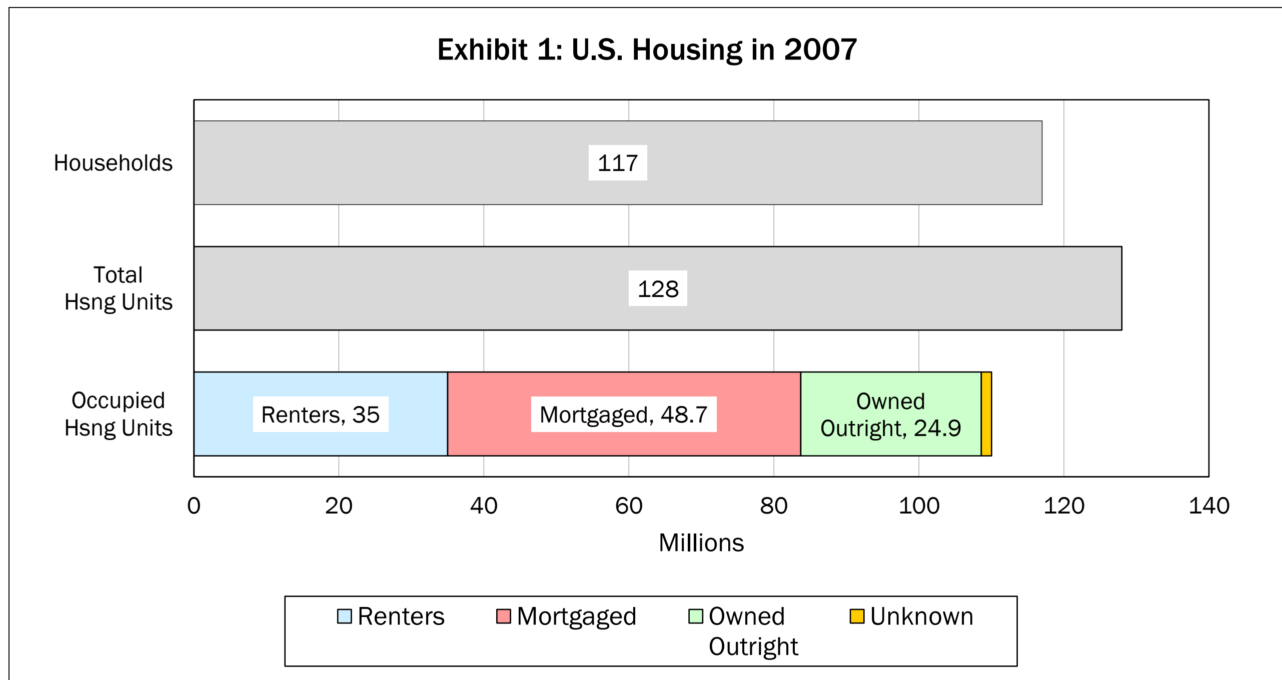
Aggregate losses on U.S. residential mortgage loans were about $1 trillion from 2007 through 2016. Those losses were ultimately borne by investors in non-agency mortgage-backed securities (MBS) and, to a lesser degree, by U.S. taxpayers.

A. The Meltdown by the Numbers

In 2007, the United States comprised 117 million households.[1] The country had 128 million housing units, of which 110 million were occupied. Renters occupied 35 million housing units, while 75 million were owner-occupied. Of the 75 million owner-occupied housing units, about 48.7 million had mortgage loans and 24.9 million were owned free

[1] Census Bureau, *Statistical Abstract of the United States 2012*, Table 694, http://www2.census.gov/library/publications/2011/compendia/statab/131ed/tables/income.pdf.

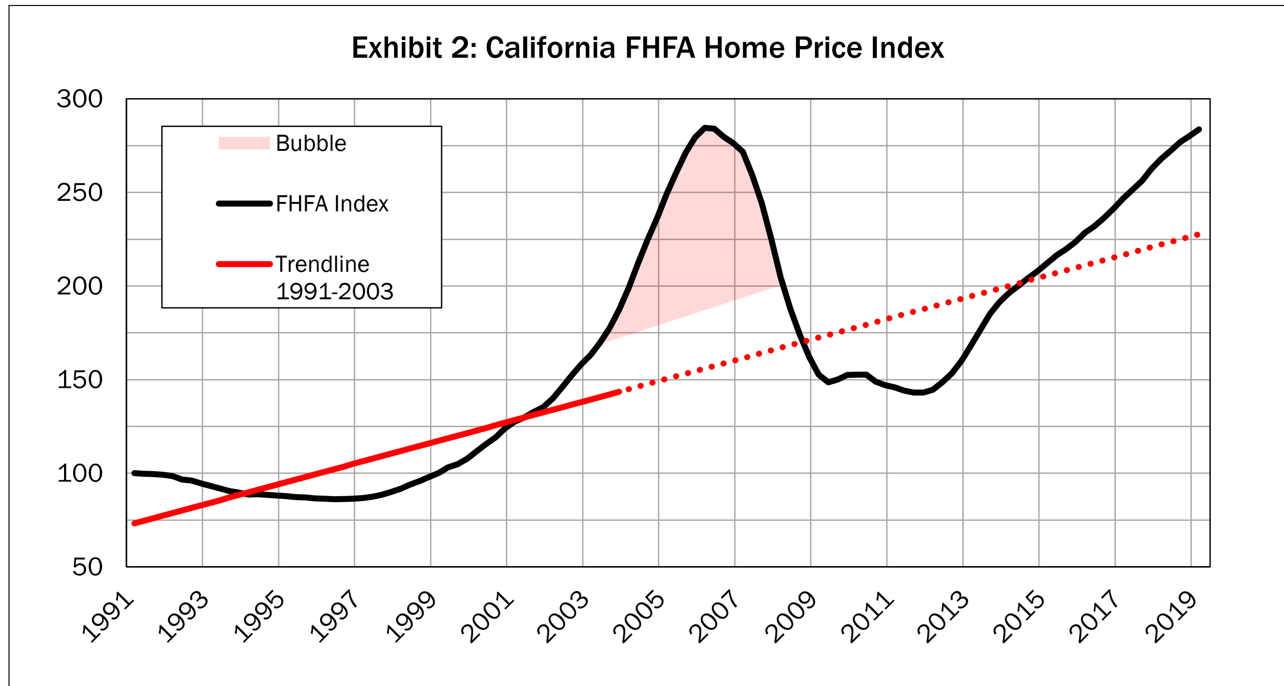
and clear (the status of a small portion is uncertain).[2] The total amount of the mortgage loans was $10.63 trillion.[3]



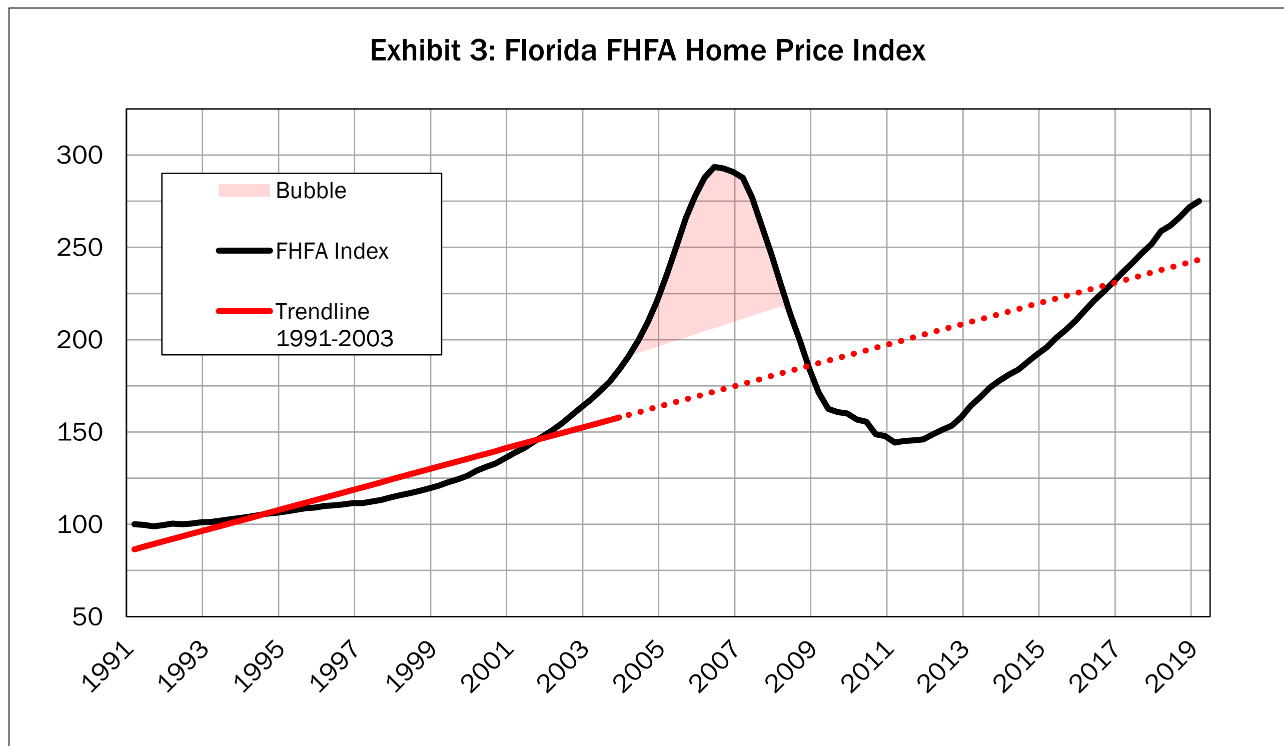
In the years leading up to 2007, home prices rose dramatically in certain parts of the U.S.; California and Florida were notable examples:

[2] Census Bureau, *Statistical Abstract of the United States 2010*, Table 963, http://www2.census.gov/library/publications/2010/compendia/statab/129ed/tables/construct.pdf.

[3] Federal Reserve Bank of St. Louis, *Federal Reserve Economic Data*, Data Ser. BOGZ1LA153165105A.



Source: Federal Housing Finance Agency



Source: Federal Housing Finance Agency

When the home price bubble burst, millions of borrowers defaulted on their mortgage loans. From 2007 through 2016, there were 7.7 million completed foreclosures.[4] During the same period, about 8.1 million loans received modifications.[5]

B. Figuring the Damage

It is possible to produce a reasonable estimate of the total losses from the mortgage meltdown using the numbers above and the following assumptions:

- The average loss severity on foreclosures is in the range of 45% to 65%.[6]
- Half the modified loans ended up in foreclosure, so it is only necessary to consider losses caused by the other half (*i.e.*, it would be double counting to ascribe losses to all the modified loans).[7]
- The average loss severity associated with modified loans is in the range of 7.5% to 15%.

Next, we estimate losses with the calculation shown in the following table:

[4] CoreLogic, *United States Residential Foreclosure Crisis: Ten Years Later*, at 4-5 (Mar 2017).

[5] Hope Now, *Full Report*, at 5 (Dec 2016).

[6] Jain, V., P. Hong, and S. Cecil, *RMBS Strategy—Non-Agency Performance Monitor, September 2019 Remittance Summary*, at 24, Wells Fargo Securities Structured Products Research (3 Oct 2019).

[7] In December 2015, the Office of the Comptroller of the Currency ("OCC") reported that the re-default on modified loans in non-agency MBS 36 months after modifications was 68.2% for loans modified in 2008, 54.4% for loans modified in 2009, 29% for loans modified in 2010, 15.8% for loans modified in 2011, and 11.1% for loans modified in 2012. Therefore, an assumption of a 50% re-default rate is a reasonable overall assumption. OCC, *OCC Mortgage Metrics Report – Third Quarter 2015*, at 33-34 (Dec 2015), https://www.occ.treas.gov/publications-and-resources/publications/mortgage-metrics-reports/files/pub-mortgage-metrics-q3-2015.pdf.

Exhibit 4: Mortgage Meltdown Loss Estimate

	No. of Loans (millions)	Frequency (of total loans)	Loss Severity Assumptions		Loss (Freq. x Severity)	
			High	Low	High	Low
2007 Total Loans	48.742					
2007-2016 Foreclosures	7.736	**15.87%**	**65%**	**45%**	**10.32%**	**7.14%**
2007-2016 Modifications	8.123					
Net Modifications	4.062	**8.33%**	**15%**	**8%**	**1.25%**	**0.62%**
Loss % from foreclosure + modifications					**11.57%**	**7.76%**
2007 Aggregate Amount of Loans ($ trillions)	10.63					
2007-2016 Est. Loss Amount ($ trillions)					**1.230**	**0.825**
					$1.03T ± 20%	

The foreclosure frequency was 15.87%. Using a high loss-severity assumption of 65% and a low loss-severity assumption of 45% implies that losses attributable to foreclosures would be in the range of 10.32% to 7.14% of the total amount of the loans. Similarly, a net modification frequency of 8.33%, combined with loss-severity assumptions of 15% and 8% imply a range of 1.25% to 0.62% for losses attributable to modifications. Combining the loss percentages from both sources and multiplying by the outstanding amount of $10.63 trillion produces an all-in range of $825 billion to $1.23 trillion. Alternatively, that can be expressed as $1.03 trillion with a 20% margin of error.

Although it took several years for delinquencies to ripen into foreclosures and for foreclosures to produce realized losses, the effects ultimately reached non-agency MBS with horrible results (Exhibits 5, 6, 7, and 8):

Exhibit 5: S&P – Adverse Credit Migrations of 2005-2007 Vintages – All U.S. RMBS

Original S&P Rating	Status as of 31 Dec 2010				No. of Ratings
	Default + Near Default	Default	Near Default	Any Downgrade	
AAA	**56.4%**	**18.8%**	**37.6%**	**76.3%**	**3,430**
AA	78.2%	45.7%	32.5%	88.3%	7,625
A	88.4%	61.9%	26.5%	93.6%	6,881
BBB	93.9%	72.3%	21.6%	95.2%	7,142
Inv. Grade	82.5%	54.0%	28.5%	90.1%	25,078

Notes: 'AAA' ratings from the same transaction are treated as a single rating in this table's calculation. Multiple rating actions are aggregated to calculate a security's cumulative rating performance. Near default means rated 'CCC+' or lower. **Source:** Erturk, E., *Global Structured Finance Securities End 2010 With Rising Credit Stability*, Standard & Poor's research report (7 Feb 2011) (Table 6b).

Exhibit 6: Moody's Multi-Year Cumulative Impairment Rates U.S. Jumbo RMBS (2000 and later vintages)						
Original Moody's Rating	**Years (as of 31 Dec 2013)**					
	5	**6**	**7**	**8**	**9**	**10**
Aaa	**3.1%**	**6.6%**	**9.1%**	**10.0%**	**10.1%**	**10.1%**
Aa	22.7%	23.6%	26.1%	27.3%	28.1%	28.1%
A	15.1%	16.5%	27.4%	38.5%	43.2%	46.9%
Baa	18.3%	22.0%	33.5%	49.7%	58.2%	60.6%
Inv. Grade	6.6%	9.7%	13.0%	15.2%	16.2%	16.7%

Notes: Does not collapse tranches with the same rating from the same deal. "Impairment" includes default, downgrade to "Ca" or "C," and certain other events where an investor receives (or expects to receive with near certainty) less value that would be expected if the obligor or obligation were making payments. **Source:** Roy, D.D., K. Kanthan, A. Metz, and N. Weill, *Default & Loss Rates of Structured Finance Securities: 1993-2013*, Moody's special comment, pp. 33, 40 (30 Sep. 2014).

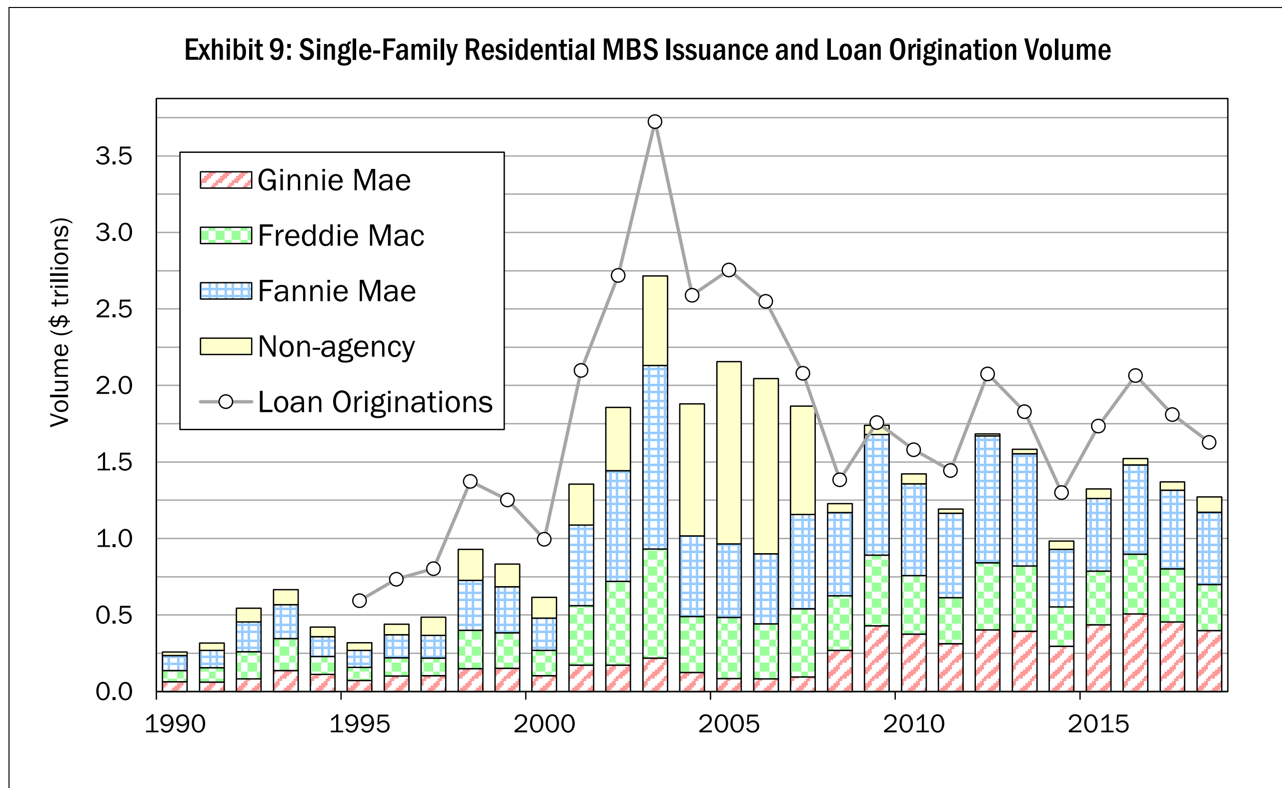
Exhibit 7: Moody's Multi-Year Cumulative Impairment Rates U.S. Subprime RMBS (2000 and later vintages)						
Original Moody's Rating	**Years (as of 31 Dec 2013)**					
	5	**6**	**7**	**8**	**9**	**10**
Aaa	**14.7%**	**16.0%**	**17.5%**	**18.0%**	**18.3%**	**18.5%**
Aa	49.2%	49.9%	50.9%	51.8%	52.5%	53.5%
A	59.7%	63.1%	73.5%	78.9%	82.2%	84.0%
Baa	70.1%	75.3%	87.3%	94.0%	95.4%	95.9%
Inv. Grade	42.3%	45.0%	51.7%	55.8%	57.9%	59.0%

Notes: Does not collapse tranches with the same rating from the same deal. "Impairment" includes default, downgrade to "Ca" or "C," and certain other events where an investor receives (or expects to receive with near certainty) less value that would be expected if the obligor or obligation were making payments. **Source:** Roy, D.D., K. Kanthan, A. Metz, and N. Weill, *Default & Loss Rates of Structured Finance Securities: 1993-2013*, Moody's special comment, pp. 33, 40 (30 Sep. 2014).

Exhibit 8: Moody's Multi-Year Cumulative Impairment Rates U.S. Alt-A/Option ARM RMBS (2000 and later vintages)						
Original Moody's Rating	**Years (as of 31 Dec 2013)**					
	5	**6**	**7**	**8**	**9**	**10**
Aaa	**29.4%**	**36.5%**	**41.2%**	**44.2%**	**44.6%**	**44.7%**
Aa	73.6%	78.0%	82.4%	83.9%	84.5%	85.2%
A	76.1%	79.4%	87.4%	89.4%	90.8%	91.6%
Baa	82.4%	84.7%	90.4%	92.4%	93.4%	94.0%
Inv. Grade	45.2%	51.1%	56.5%	59.2%	59.9%	60.3%

Notes: Does not collapse tranches with the same rating from the same deal. "Impairment" includes default, downgrade to "Ca" or "C," and certain other events where an investor receives (or expects to receive with near certainty) less value that would be expected if the obligor or obligation were making payments. **Source:** Roy, D.D., K. Kanthan, A. Metz, and N. Weill, *Default & Loss Rates of Structured Finance Securities: 1993-2013*, Moody's special comment, pp. 33, 40 (30 Sep. 2014).

Issuance of non-agency MBS fell off sharply following the mortgage meltdown. This is evident in the size of the solid yellow segment of the columns in Exhibit 9.



Source: *Mortgage Market Statistical Annual 2019*, pp. 3, 85.

The contraction of non-agency MBS activity was accompanied by an increase in agency MBS volumes. In the years since the mortgage meltdown, agency MBS have been the funding source for the great majority of new mortgage loan originations.

C. Causes of the Mortgage Meltdown

At the time it was happening, the true causes of the mortgage meltdown were not readily apparent. They emerged later from investigations of the major mortgage lenders by the Department of Justice (DOJ). Those investigations revealed an industry-wide breakdown of loan origination and securitization practices. The major lenders frequently originated loans that did not comply with their own underwriting criteria. Common types of defects included (i) defective appraisals, (ii) exceptions allowed without sufficient compensating factors, (iii) missing documentation of borrower income or assets, and (iv) misstated occupancy status. When the loans were included in MBS deals, the prospectuses did not disclose the defects.

The deficient practices allowed may borrowers to receive loans that were larger than they could afford. This, in turn, served to fuel the housing bubble in key areas, including California and Florida. When the bubble ultimately burst, many borrowers defaulted on their loans.

The DOJ investigations culminated in large settlements that the major lenders and MBS issuers agreed to pay (Exhibit 10). The size of the settlements speaks for itself. Additionally, many of the settlements included admissions of misconduct by the lenders and MBS issuers.[8] In other instances, the settlements detail the DOJ's findings but the settling lenders and issuers did not admit to them.[9]

Exhibit 10: Selected Settlements of Justice Department MBS Cases
($ billions)

Date	Total Amount	Cash Penalty	Consumer Relief	Defendant	Plaintiff
11/19/2013	13.0	9.0	4.0	JP Morgan Chase	DOJ & various states[1]
7/14/2014	7.0	4.5	2.5	Citigroup	DOJ & various states
8/21/2014	16.65	9.65	7.0	Bank of America	DOJ & various states
2/25/2015	2.6	2.6	0.0	Morgan Stanley	DOJ
2/11/2016	3.173	2.773	0.4	Morgan Stanley	DOJ & various states[2]
4/11/2016	5.06	3.26	1.8	Goldman Sachs	DOJ & various states
1/17/2017	7.2	3.1	4.1	Deutsche Bank	DOJ
1/18/2017	5.28	2.48	2.8	Credit Suisse	DOJ
3/29/2018	2.0	2.0	0	Barclays	DOJ
8/1/2018	2.09	2.09	0	Wells Fargo	DOJ
8/14/2018	4.9	4.9	0	Royal Bank of Scotland	DOJ
10/9/2018	0.765	0.765	0	HSBC	DOJ
10/16/2018	0.48	0.48	0	Nomura	DOJ
4/12/2019	1.5	1.5	0	General Electric	DOJ

[1] Includes $4 billion of a previously announced settlement with the FHFA.
[2] Reported as $3.2 billion but includes $2.6 billion of a previously announced settlement with DOJ.

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[8] *See, e.g.*, JPMorgan-DOJ Settlement Agreement, Statement of Facts (19 Nov 2013), https://www.justice.gov/iso/opa/resources/94320131119151031990622.pdf; Citigroup-DOJ Settlement Agreement, Statement of Facts (14 Jul 2014), https://www.justice.gov/iso/opa/resources/558201471413645397758.pdf; Bank of America-DOJ Settlement Agreement, Statement of Facts (21 Aug 2014), https://www.justice.gov/iso/opa/resources/43120148291412207997 08.pdf; Morgan Stanley-DOJ Settlement Agreement (11 Feb 2016), https://www.justice.gov/opa/file/823671/download; Goldman Sachs-DOJ Settlement Agreement, Statement of Facts (11 Apr 2016), https://www.justice.gov/opa/file/839901/download; Deutsche Bank-DOJ Settlement Agreement, Statement of Facts (17 Jan 2017), https://www.justice.gov/opa/press-release/file/927271/download; Credit Suisse-DOJ Settlement Agreement, Statement of Facts (18 Jan 2017), https://www.justice.gov/opa/press-release/file/928496/download.

[9] *See, e.g.*, Wells Fargo-DOJ Settlement Agreement, at 2-7 (1 Aug 2018), https://www.justice.gov/opa/press-release/file/1084371/download; Royal Bank of Scotland-DOJ Settlement Agreement, Statement of Facts (14 Aug 2018), https://www.justice.gov/opa/press-release/file/1087151/download; Nomura-DOJ Settlement Agreement, Statement of Facts (16 Oct 2018), https://www.justice.gov/usao-edny/press-release/file/1101366/download.

For example, the admissions in the Bank of America (B-of-A) settlement with the DOJ highlighted Countrywide's improper underwriting and included colorfully named policies and programs such as "Shadow Guidelines" and "Extreme Alt-A." The statement of facts described how the Shadow Guidelines allowed Countrywide to evade its disclosed underwriting limitations and risk controls:

> When branch underwriters received loan applications that did not meet the program parameters in the Loan Program Guides (*e.g.*, credit score, LTV, loan amount), the branch underwriters were authorized to refer the applications to more experienced underwriters at the relevant divisional "Structured Loan Desk" ("SLD") for consideration of an "exception." Underwriters at the SLD were authorized to approve requests to make an "exception" to the Loan Program Guides if the proposed loan and borrower complied with the characteristics described in another set of guidelines, referred to as so-called "Shadow Guidelines," and the loan contained compensating factors supporting the exception request. The Shadow Guidelines generally permitted loans to be made to borrowers with lower credit scores and allowed for higher LTV ratios than the Loan Program Guides. …
>
> If a loan application did not meet the credit standards of the Shadow Guidelines, Structured Loan Desk underwriters were authorized to submit a request to Countrywide's Secondary Marketing Structured Loan Desk ("SMSLD"), which would then determine whether the requested loan, if originated, could be priced and sold in the secondary market. If a loan could be priced and sold, SMSLD would provide a price for the loan and ultimately it would be returned to the branch underwriter.[10]

The statement of facts also describes how Countrywide used less stringent underwriting guidelines for due diligence reviews than for originating loans:

> In certain instances, Countrywide provided the due diligence providers with what were known as "Seller Loan Program Guides," which were guidelines based on the characteristics of loans that Countrywide had been able to make and sell in the past. Seller Loan Program Guides reflected the credit attributes of the loans that Countrywide had previously made and sold, and as a result they frequently listed lower credit scores or higher DTI and LTV ratios than the applicable Loan Program Guides or the applicable Shadow Guidelines.[11]

The B-of-A statement of facts is especially revealing about how Countrywide allowed underwriting exceptions. It describes how the firm essentially abandoned the critical process of weighing the sufficiency of compensating factors in approving requests for underwriting exceptions:

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[10] Bank of America-DOJ Settlement Agreement, Statement of Facts, at 7 (21 Aug 2014), http://www.justice.gov/iso/opa/resources/43120148291412207997 08.pdf.

[11] *Id*. at 8.

> On July 28, 2005, a Countrywide executive sent an email informing the SLD that it could begin to expand the programs for which it could approve "exception" loans to programs other than the 30 year fixed and 5/1 ARM loan products. He wrote:
>
> > [T]o the widest extent possible, *we are going to start allowing exceptions on all requests, regardless of program, for all loans less than $3 million, effective immediately.*
> >
> > * * * *
> >
> > The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases.
>
> By June 7, 2006, less than a year later, an internal Countrywide email indicated that during May 2006, for prime loans, exceptions constituted by dollar amount approximately 30% of fundings for certain fixed loans, 40% for Pay-Option ARMs, and 50% for expanded criteria hybrid loans.[12]

Countrywide's "Extreme Alt-A" program went even further in evading its disclosed risk limitations. In that program, the underwriters did not even have to *identify* compensating factors:

> In late 2006, Countrywide, after analyzing the mortgage products offered by certain of its competitors, implemented an expansion of its underwriting guidelines used by SLD underwriters, internally referred to as "Extreme Alt-A."
>
> * * *
>
> On April 5, 2006, a Countrywide executive sent an email regarding the Extreme Alt-A program that read, "[b]ecause this is a 'hazardous product' (direct quote from [another Countrywide executive]), ... [that Countrywide executive] wants to see a detailed implementation plan which addresses the process for originating and selling these loans such that we are not left with credit risk." Countrywide began offering the Extreme Alt-A program in 2006 and began originating and selling loans under its expanded underwriting guidelines. As with most exception loans, the Extreme Alt-A guidelines called for Extreme Alt-A loans to be processed at the SLD level, but the Extreme Alt-A guidelines did not require SLD underwriters to identify compensating factors in connection with underwriting the loans.[13]

The whole statement of facts in the B-of-A settlement agreement is 30 pages long. In addition to the excerpts above concerning Countrywide, other portions highlight the improper underwriting practices at Merrill Lynch and B-of-A itself.

Another example is the settlement with Credit Suisse. Credit Suisse admitted that it securitized loans that did not comply with its representations to investors. For example, Credit Suisse's head of credit and underwriting told senior traders that "We are selling

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[12] *Id*. at 10 (emphasis added).

[13] *Id.* at 11 (alterations in original).

and securitizing loans with missing docs all the time through the other desks."[14] The company purchased and securitized loans that its due diligence vendor graded as non-compliant without compensating factors.[15] The company also had deficient process for reviewing loans purchased through its conduit channel (as distinct from bulk purchases). The company used outside vendors that were not adequately supervised. The company's internal audit function found "loan appraisals [that were] not being compared to external sources for reasonableness as required; and approval of loans that did not have all of the required documentation (second appraisal/AVM) as prescribed in the Underwriting Guidelines."[16] Additionally, the company's "employees were aware that the LTVs may have been calculated using appraisals with values that were inflated."[17] Credit Suisse even sought to avoid documenting results of its quality control process to avoid documenting the existence of defects in the loans.[18]

Exhibit 11 shows another series of settlements by selected lenders and issuers with the Federal Housing Finance Agency (FHFA) and the government-sponsored mortgage enterprises (the GSEs). The sheer size of these settlements further reflects the widespread misconduct by the settling banks.

Exhibit 11: Selected Settlements of FHFA & GSE Non-agency MBS Cases

Date	Amount ($ millions)	Defendant	Plaintiff
12/31/2010	1,520	Bank of America	Fannie Mae
12/31/2010	1,350	Bank of America	Freddie Mac
5/28/2013	250	Citigroup	FHFA
7/25/2013	885	UBS	FHFA
10/25/2013	5,100	JP Morgan Chase	FHFA
11/6/2013	335	Wells Fargo	FHFA
12/2/2013	404	Bank of America	Freddie Mac
12/20/2013	1,925	Deutsche Bank	FHFA
12/31/2013	475	Ally Financial	FHFA
1/7/2014	10,300	Bank of America	Fannie Mae
2/7/2014	1,250	Morgan Stanley	FHFA
2/27/2014	122	Société Générale	FHFA

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[14] *See* Credit Suisse-DOJ Settlement Agreement, Statement of Facts, at 5 (18 Jan 2017), https://www.justice.gov/opa/press-release/file/928496/download.

[15] *Id*. at 6-7.

[16] *Id*. at 10.

[17] *Id*. at 13.

[18] *Id*. at 17.

Exhibit 11: Selected Settlements of FHFA & GSE Non-agency MBS Cases			
Date	Amount ($ millions)	Defendant	Plaintiff
3/21/2014	885	Credit Suisse	FHFA
3/26/2014	9,300	Bank of America, Countrywide Financial, and Merrill Lynch	FHFA
4/24/2014	280	Barclays	FHFA
4/29/2014	110	First Horizon	FHFA
6/19/2014	100	RBS	FHFA
8/22/2014	3,150	Goldman Sachs	FHFA
9/12/2014	550	HSBC	FHFA
7/12/2017	5,500	RBS	FHFA
6/25/2018	847	Nomura	FHFA*

* Case was tried and affirmed on appeal. *Federal Housing Finance Agency v. Nomura Holdings America et al.*, 104 F. Supp.3d 441 (S.D.N.Y. 2015) (https://cite.case.law/f-supp-3d/104/441/), *aff'd*. 873, F.3d 85 (2d Cir. 2017), *cert. denied* 585 U.S. ___ (No. 17-1302, 25 Jun 2018).

Apart from the cases brought by the DOJ, the FHFA, and the GSEs, many other plaintiffs also sought to recover losses suffered on non-agency MBS sold in the years immediately preceding the financial crisis. Some of those cases have reached settlements (see Exhibit 12), but many others are still ongoing.

Exhibit 12: Selected Settlements of Other Non-agency MBS Cases			
Date	Amount ($millions)	Defendant	Plaintiff
4/15/2011	1,100	Bank of America	Assured Guaranty
4/27/2012	28	Option One	Securities & Exchange Com.
6/21/2012	40	Lehman Brothers	Local 302
4/2/2013	165	Bank of America	Nat'l Credit Union Admin.
5/28/2013	200	Citigroup	Allstate Insurance
6/21/2013	105	Flagstar Bancorp	Assured Guaranty*
10/17/2013	12	Deutsche Bank	Nevada Attorney General
11/7/2013	154	RBS	Securities & Exchange Com.
11/15/2013	4,500	JP Morgan Chase	private MBS investors
1/6/2014	undisclosed	Goldman Sachs	Prudential Insurance
1/31/2014	8,500	Bank of America	various MBS investors
2/24/2014	275	RBS	NJ Carpenters Health Fund
2/24/2014	undisclosed	JP Morgan Chase	Syncora Guarantee
4/21/2014	undisclosed	UBS	Union Central Life Ins.
7/24/2014	275	Morgan Stanley	Securities & Exchange Com.
7/31/2014	285	Citigroup	Securities & Exchange Com.
8/14/2014	undisclosed	RBS	Assured Guaranty
8/28/2014	undisclosed	Bank of America	National Integrity Life Ins.
9/8/2014	95	Morgan Stanley	pension funds
11/17/2014	undisclosed	Bank of America	FDIC

Exhibit 12: Selected Settlements of Other Non-agency MBS Cases			
Date	Amount ($millions)	Defendant	Plaintiff
11/12/2014	undisclosed	Citi	Charles Schwab
12/18/2014	95	Morgan Stanley	class action
1/15/2015	459	various banks	FHLB San Francisco
2/1/2015	500	JP Morgan Chase	retirement funds
2/6/2015	undisclosed	Goldman Sachs	life insurers
2/13/2015	235	Citigroup, Goldman Sachs, UBS	NJ Carpenters Health Fund
3/26/2015	undisclosed	UBS	Capital Ventures Int'l
4/2/2015	undisclosed	Bank of America	BNP Paribas
4/27/2015	undisclosed	Bank of America	Prudential Securities
5/16/2015	806	Nomura	FHFA
6/26/2015	undisclosed	JPMorgan	Charles Schwab
7/17/2015	388	JPMorgan	class action
8/13/2015	undisclosed	HSBC	Charles Schwab
8/13/2015	272	Goldman Sachs	union pension funds
8/14/2015	undisclosed	Deutsche Bank	Mass Mutual Life Ins
9/22/2015	undisclosed	Deutsche Bank	FHLB Des Moines
9/30/2015	undisclosed	Credit Suisse	Charles Schwab
10/27/2015	325	Barclays	Nat'l Credit Union Admin.
10/27/2015	53	Wachovia Cap. Mkts.	Nat'l Credit Union Admin.
11/2/2015	undisclosed	First Tennessee Bank	Charles Schwab
12/15/2015	undisclosed	Bank of America	Charles Schwab
12/18/2015	225	Morgan Stanley	Nat'l Credit Union Admin.
1/22/2016	63	various banks	Virginia
1/25/2016	995	JP Morgan Chase	Ambac
1/29/2016	63	Morgan Stanley	FDIC
2/2/2016	63	eleven banks	Commonwealth of Virginia
3/29/2016	undisclosed	Barclays	Mass Mutual Life Ins.
4/25/2016	190	Bank of America	FHLB Seattle
9/22/2016	undisclosed	WMC Mortgage	U.S. Bank
9/27/2016	1,100	Royal Bank of Scotland	Nat'l Credit Union Admin.

* Settled at the appeal stage after a decision at trial. *Assured Guaranty Municipal Corp. v. Flagstar Bank*, 920 F.Supp.2d 475 (S.D.N.Y. 2013) (https://www.leagle.com/decision/inadvfdco131219000160).

D. Analyzing the Fallout of the Mortgage Meltdown

The aftermath of the mortgage meltdown offers potential lessons for lawyers, business professionals, and policy makers. The episode was arguably the largest failure of legal protections for investors since the Great Depression. Investors have recovered only a small percentage of their total losses. Why?

Federal Securities Laws: The federal securities laws generally provided little protection for investors who bought non-agency MBS in the years before the financial

crisis. The crux of the problem was the short limitations period under the Securities Act of 1933 (the "1933 Act"). By the time that many investors figured out that they had been misled and suffered losses, it was too late to pursue federal securities claims.

In theory, the most powerful provision for an injured investor to use for recovering losses would be 1933 Act § 12 (15 U.S.C. § 77*l*). That provision allows an injured investor to rescind the purchase of the securities. But the longest deadline for suing under § 12 is three years after the purchase. For investors who bought highly-rated, senior tranches of non-agency MBS offerings, it often took longer than three years for the key facts to emerge. Also, it often took longer than three years for the performance of the underlying loans to deteriorate to the point where those securities became realistically vulnerable to losses. In most instances, the investors could not tell that they should have started a § 12 lawsuit until the deadline had already expired.

Today, years after-the-fact, some might assert that investors should have commenced legal actions as soon as the performance of the loans backing their securities started to slide. But this view ignores the fact that the highly-rated, senior tranches of non-agency MBS deals were designed to withstand substantial deterioration in the performance of their underlying loans and still not suffer losses. Even though the performance deterioration on some subprime loans *started* to emerge in 2007,[19] the impact on senior tranches did not become apparent until years later.

Apart from 1933 Act § 12, the federal securities laws include other provisions that theoretically offer remedies. However, those provisions are usually less useful to non-agency MBS investors. Most importantly, they generally provide for limited damages rather than rescission of the sale. In addition, some of the other provisions require additional elements of proof, such as scienter.

Only a small proportion of investors managed to recover under the federal securities laws. Others used either state "blue sky" laws or common law principles such as fraud or breach of contract. An important exception, however, were federal agencies, such as the FHFA. The FHFA successfully pursued claims under the federal securities laws against many defendants (see Exhibit 11). Unlike other investors, the FHFA has the benefit of a special law (12 U.S.C. § 4617(b)(12)) that gives it more time to start legal proceedings.

[19] Performance deterioration on so-called "alt-A" loans followed later. Performance deterioration on prime-quality loans occurred last.

To make the federal securities laws effective in protecting MBS investors, Congress could extend the deadline for bringing claims. Such a change seems appropriate considering how the capital markets have evolved and become more complicated over the past 86 years.

Contractual Representations and Warranties: In contrast to claims under the federal securities laws, claims based on contractual representations and warranties (R&Ws) have been partly effective for non-agency MBS investors seeking to recover losses. The governing agreements for a typical non-agency MBS transaction include extensive R&Ws. If a loan does not comply with the representations and warranties, then the lender (or other responsible party) must either repurchase it or replace it with a substitute loan that does comply.[20] In some cases, when lenders refused to repurchase or replace defective loans, the MBS trustees sued to enforce the repurchase obligation.[21] The lawsuits came to be known as "put-back" cases because the securitization trusts were "putting the loans back" to the lenders.

Although put-back cases worked in some instances, their effectiveness in the future may be diminished. A 2015 decision by the New York Court of Appeals, *ACE Securities Corp. v. DB Structured Products*, 25 N.Y.3d 581 (2015), holds that the deadline for bringing a lawsuit on a deal's R&Ws is six years after the deal's closing date (*i.e.*, the date the contracts are signed). That deadline applies even if an investor does not discover a breach of R&W until later.

The *ACE Securities* decision is important for investors across the whole country because the governing agreements for non-agency MBS transactions generally specify New York law as the governing law. Following the *ACE Securities* decision, many put-back cases were dismissed for having missed the six-year deadline. Others were never even started.

The short limitation periods under the federal securities laws and for R&W claims under New York law creates challenges for non-agency MBS investors. Until the experience of the mortgage meltdown, the *perceived* availability of effective legal remedies largely allowed investors not to perform in-depth, pre-closing reviews of the

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[20] *See generally*, Adelson, M., *Representations and Warranties in Mortgage-Backed Securities*, J. of Structured Fin., vol. 23, no. 1., pp. 98-121 (Spring 2017).

[21] In the great majority of cases, the MBS trustee brought suit after having been directed to do so by investors holding a sufficient proportion of the securities to direct action by the trustee. Trustee action in the absence of mandatory investor direction was rare.

individual loans being included in a transaction. That made the process of executing the deals more efficient.

New York's legislature could reverse the *Ace Securities* decision. It might do so by amending § 206 of the state's Civil Practice Law & Rules (CPLR).

Economic cycles and real estate bubbles can be key triggers of mortgage loan defaults. Defects in loans may remain concealed during good times but reveal themselves – via defaults – during hard times. If non-agency MBS deals had longer-lasting protections, investors could have greater confidence in investing the sector. In the absence of longer-lasting protections, investors may demand pre-closing reviews of the all the loans backing a proposed deal. The expense could make many non-agency MBS transactions uneconomical.

Trustee Litigation: The most recent wave of investor lawsuits involves claims by investors against the MBS trustees. The investors allege that the trustees failed to perform their duty to enforce the obligation of lenders (or other responsible parties) to repurchase defective loans and the obligation of servicers to properly service mortgage loans.

E. Mortgage Meltdown vs. the Financial Crisis

The mortgage meltdown is not the same thing as the 2008 global financial crisis. The financial crisis was an even bigger event and had much larger effects than the $1.03 trillion (±20%) of losses attributable to the mortgage meltdown. The full cost of the financial crisis is likely in the range of $5 trillion to $15 trillion.[22] The often-cited causes were excessive leverage and the risk appetite of financial firms. The deeper causes, however, are more complex and have roots that stretch back many decades. Those include the following:

- ***Securities Firms Converting from Partnerships to Corporations:*** The change in the organizational form of securities firms caused a simultaneous change in incentives and risk-taking behaviors. After the change, non-owner employees became responsible for key risk decisions but had skewed incentives. Instead

[22] Adelson, M., *The Deeper Causes of the Financial Crisis, Mortgages Alone Cannot Explain It*, J. Portfolio Mgt., vol. 39, no. 3 (2015). Other sources have pegged the cost of the financial crisis as high as $20 trillion in terms of lost GDP. *See* Better Markets, *The Cost of the Crisis – $20 Trillion and Counting*, at 2 (July 2015), https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf (the calculation of the $20 trillion includes $9.1 trillion of losses that did not actually occur because they were prevented by government intervention).

of taking risks with their own money, the employees could take risks with shareholders' money.

- ***Deregulation of Financial Services:*** Deregulation let employees of financial firms take new and greater risks. Financial sector deregulation did not occur in isolation. It was part of a broader deregulation movement that started in the 1970s and affected many industries: air travel, cable TV, electric power, interstate trucking, natural gas transmission, railroads, telephone service, *and* financial services.

- ***The Quant Movement:*** Widespread over-reliance on mathematical models and computer simulations led to many bad business decisions. The rigor and apparent discipline of quantitative models helped them gain widespread acceptance among financial professionals. In fact, the discipline and rigor led many financial professionals to mistakenly believe that risk had been conquered. Products and activities that relied heavily on quantitative models were at the heart of how financial firms expanded their activities to take more and greater risks.

- ***The Spread of Risk-Taking Culture Through the Financial Industry*:** The combination of the first three deeper causes, together with high compensation for investment bank professionals, meant that other types of financial firms tried to emulate investment banks' activities and behaviors.

- ***Globalization:*** Globalization promoted the spread of strong risk appetites and high leverage across international boundaries. Two key aspects were the removal of capital controls (*i.e.*, the demise of the Bretton Woods system in 1971) and the homogenization of business practices and cultures. The later was a natural outgrowth of advances in computers, telecommunications, and air travel.

Even though it is "smaller" than the 2008 financial crisis, the mortgage meltdown is still a huge event by any reasonable reckoning. As described above, an estimated 11.7 million households experienced financial distress or significant setbacks (7.7 million foreclosures and an estimated 4 million modifications without foreclosure). The event

was felt directly by *households*. By contrast, the 2008 financial crisis had its strongest effects on financial businesses rather than households (Exhibit 13).[23]

Exhibit 13: Leverage and Risk Appetite Aftermath

Company	Credit Rating at 1/1/07 (S&P)	Δ Eq Px 2007-08	Notes
AIG	AA+	-97.7%	~$183b in bailouts. US govt owns 80% stake
Bear Stearns	AA-	-94.2%	Shotgun marriage with JP Morgan for $10/share
Citigroup	AA	-86.7%	Hybrids exchanged, U.S. gov't took 36% equity
IndyMac	BBB	-99.6%	Seized by FDIC in 2008, auctioned off in March 2009
Lehman	AA-	-100.0%	Bankruptcy 9/15/2008.
Merrill Lynch	AA-	-18.1%	Bought out by B-of-A 9/14/2008
Northern Rock	A+	-92.4%	Nationalized 2/22/2008
RBS	AA	-92.6%	Part nationalization, UK gov't took 81.5% stake
UBS	AA+	-76.3%	Write-downs >$50B since 2007
Wachovia	AA-	-89.3%	"Silent run" in Sep 2008; acquired by Wells Fargo
WaMu	A	-100.0%	Receivership 9/25/2008
Fannie Mae	AA-	-98.6%	Conservatorship 9/7/2008. U.S. Treasury acquired preferred stock and warrants worth 80% stake
Freddie Mac	AA-	-98.9%	
Ambac	AAA	-98.5%	Bankruptcy 11/8/2010
MBIA	AAA	-94.3%	Rated B, attempting restructuring
FGIC	AAA	n.a.	Bankruptcy 8/3/2010
FSA	AAA	n.a.	Acquired by AGC in July 2009
ACA	A	n.a.	Restructuring plan 8/8/2008
AGC	AAA	-56.4%	Now rated AA (S&P), A2 (Moody's)-
CIFG	AAA	n.a.	CC rating withdrawn 2/16/2010

II. Rating Standards Erosion: CMBS Case Study

An interesting example of eroding credit standards is what happened in the CMBS sector in from 1999 to 2006. During that time credit enhancement levels declined sharply on CMBS deals even though loan quality was not improving. In fact, according to some views, loan quality was actually worsening while the credit support levels were falling.

[23] An area of intersection between the mortgage meltdown and the 2008 financial crisis is the $16 trillion drop in U.S. household net worth during 2008 and 2009. Much of that drop was attributable to falling home prices. According to a Federal Reserve survey of consumer finances, the median net worth of American families declined from $126,400 in 2007 to $77,300 in 2010. *See* Bricker, J., A. Kennickell, K. Moore, and J. Sabelhaus, *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin, vol. 98, no. 2, p. 17 (June 2012), https://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf.

In its 1999 criteria, S&P stated that the AAA credit support for a generic CMBS pool transaction was 30%.[24] The rating agency illustrated its methodology for determining losses with an example of an $8 million loan on a property valued at $10 million (*i.e.*, an LTV of 80%). The assumed decline in property value for the AAA stress case was 50%. After the effect of expenses and the timing of payments, the net loss was calculated to be 49.5% of the loan balance.[25]

In 2004 S&P released new criteria. The report stated that the AAA credit support for a generic CMBS pool was 20%.[26] The 2004 report did not explain why the credit enhancement level for a generic pool had declined from 30% to 20%. It did, however, include an example illustrating its methodology for determining losses. The example showed the same type of calculations as in the 1999 criteria but with different starting assumptions. The 2004 example started with a loan of $8 million on a property valued at $14.5 million (*i.e.*, an LTV of 55%). Just like in the 1999 criteria, the assumed decline in property value for the AAA stress case was 50%. However, starting with a lower LTV, the calculated net loss (after the effect of expenses and the timing of payments) was 20.6%. Based on that calculation the rating agency concluded that the AAA credit support level required for that loan would be 20.6%

As shown on Exhibit 14, S&P's average AAA credit enhancement levels for CMBS deals was slightly below 20% in 2003 and substantially below 20% for 2004. It kept declining (without explanation), reaching a low point of 12% for 2006.

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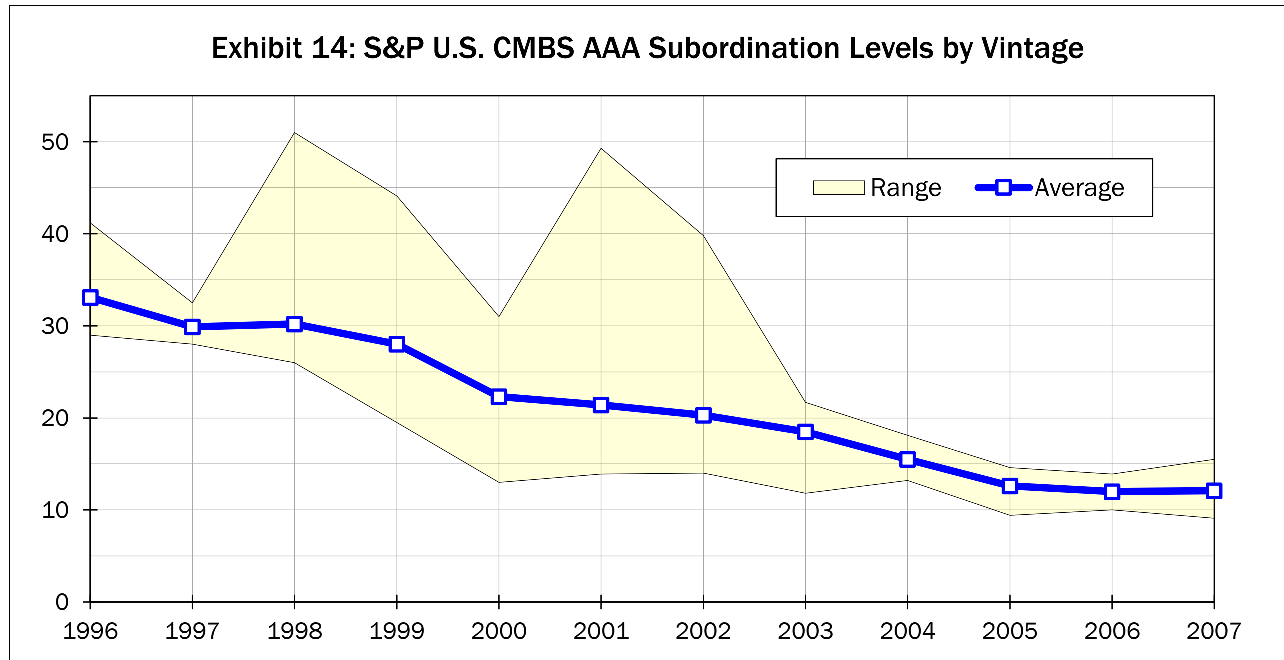
[24] Standard & Poor's, *CMBS Property Evaluation Criteria* at 25 (1999) (Table 1).

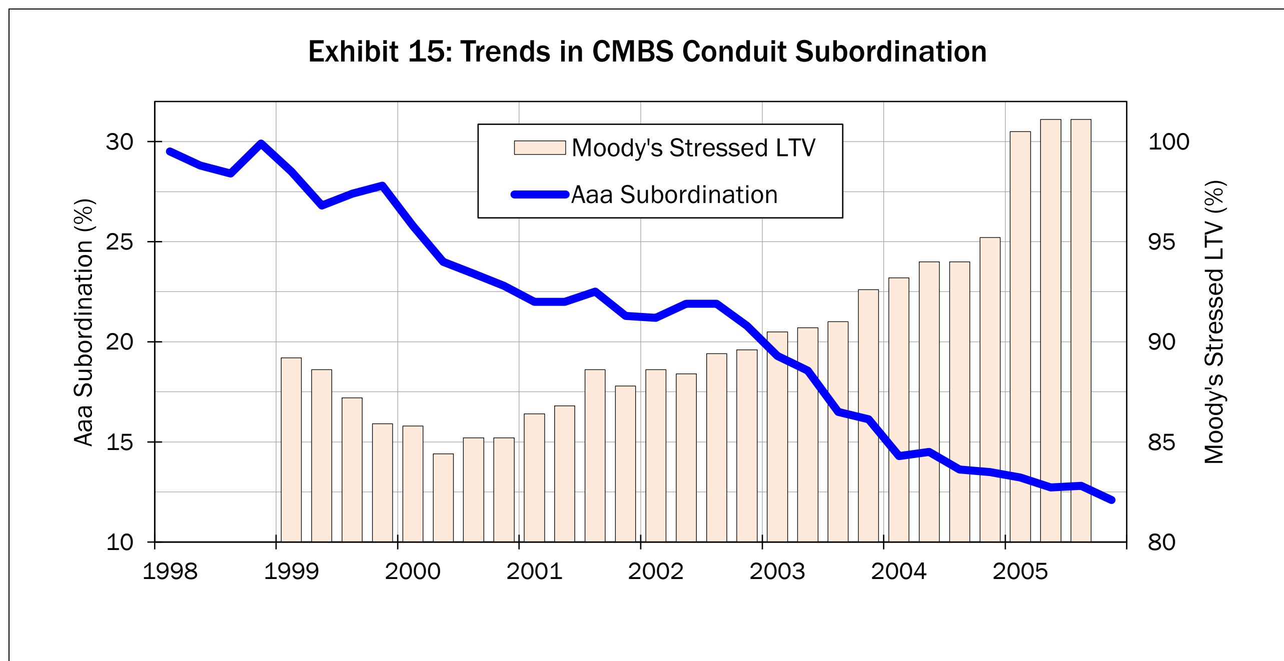
[25] *Id*. (Table 3).

[26] Standard & Poor's, *CMBS Property Evaluation Criteria* at 14 (2004) ("For example, in a generic conduit with 20% credit support at the 'AAA' level and 2% at the 'B' level, the pool would have to suffer losses that exceed 2% of the loan balance before the 'B' certificates would be impacted.").



Source: Palmisano, J., T. Gillis, J. Manzi, H. Trifon, B. Duka, and E. Thompson, *U.S. CMBS Rating Methodology and Assumptions for Conduit/Fusion Pools*, Standard & Poor's, criteria report (26 Jun 2009) (Table 2 and Chart 1).

S&P was not alone. As shown on Exhibit 15, Moody's average Aaa credit enhancement levels also declined steadily at the same time. They started around 30% in 1998 and reached the area of 12% in late 2005.



Sources: Jacob, D., D. Resler, M. Adelson, J. Dunlevy, A. Frank, J. Manzi, M. Whetten, and G. Zukowski, *U.S. Fixed Income 2006 Outlook/2005 Review*, at 65-66, Nomura Securities International (15 Dec 2005), https://web.archive.org/web/20130603145450/http://www.securitization.net/pdf/Nomura/FixedIncomeOutlook06.pdf.

Interestingly, the market reacted to declining credit enhancement levels by credit tranching the triple-A portion of transactions into senior tranches with 20% credit enhancement and junior tranches with lower levels of credit enhancement. The first transaction to employ that structure was CSFB 04-C4, which priced on 10/27/2004. It was only a few months later, in early May 2005, that the market went a step further, dividing the tranches with 20% enhancement into "super-duper" tranches with 30% credit enhancement and mezzanine tranches at the triple-A level with 20% credit enhancement. The first transaction to display such a structure was WBCMT 05-C18. The deal had three tranches with triple-A ratings: (i) the "super-duper seniors" with 30% credit enhancement, (ii) the "super seniors" with 20%, and (iii) the "seniors" with roughly 13%. Today, the "super seniors" are generally called "AM" classes ("M" for mezzanine), while the "seniors" are called "AJ" classes ("J" for junior). The top tranches are still called "super-dupers" or just "dupers."

In the aftermath of the mortgage meltdown and the 2008 financial crisis, the CMBS sector experienced a wave of poor performance. Although not as severe as some areas of the residential MBS space, the performance was horrible by any historical measure. By the end of 2010, defaults reached 5.5% on 2005-2007 vintage CMBS that S&P had originally rated AAA. Another 6.4% of such securities were on the brink of default (Exhibit 16).

Exhibit 16: S&P – Adverse Credit Migrations of 2005-2007 Vintages –U.S. CMBS

Original S&P Rating	Status as of 31 Dec 2010				No. of Ratings
	Default + Near Default	Default	Near Default	Any Downgrade	
AAA	**11.9%**	**5.5%**	**6.4%**	**82.1%**	**312**
AA	12.9%	7.2%	5.7%	80.5%	735
A	22.1%	7.0%	15.1%	83.2%	810
BBB	45.4%	14.9%	30.5%	81.9%	1,109
Inv. Grade	27.4%	9.8%	17.6%	81.9%	2,966

Note: 'AAA' ratings from the same transaction are treated as a single rating in this table's calculation. Multiple rating actions are aggregated to calculate a security's cumulative rating performance. Near default means rated 'CCC+' or lower. **Source:** Erturk, E., *Global Structured Finance Securities End 2010 With Rising Credit Stability*, Standard & Poor's research report (7 Feb 2011) (Table 6e).

III. Policy Responses

The initial legislative response to the mortgage meltdown and the financial crisis was the authorization a concentrated shot of liquidity into the financial system in the

form of the Troubled Asset Relief Program (TARP).[27] It was followed by other similar initiatives, such as the Fed-sponsored Term Asset-Backed Loan Facility (TALF).[28] Even after the TARP and similar programs had been wound down, the Fed continued massive liquidity injections into the U.S. economy for years. The tools were quantitative easing and low interest rates.

The FHFA also participated in the liquidity efforts by raising the conforming loan limit (*i.e.*, the maximum amount of a loan eligible for purchase by Fannie Mae or Freddie Mac) to $729,750 for loans secured by single-unit properties in high-cost areas. The limit had previously been $417,000.[29] Increasing the conforming loan limit made a very high percentage of new mortgage loans eligible for the Fannie Mae and Freddie Mac programs. The increase helped to prevent a funding void that might otherwise have been caused by the contraction in non-agency MBS activity (*see* Exhibit 8).

The main legislative response to the mortgage meltdown and the 2008 financial crisis was the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA).[30] Some of the key features of the DFA included the following:

- ***Risk Retention:*** The DFA directed federal agencies to issue regulations requiring at least 5% risk retention by securitization issuers/sponsors.[31]

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[27] Troubled Asset Relief Program ("TARP"), Pub. L. No. 110-343, Title I, 122 Stat. 3765 (2008), https://www.govinfo.gov/content/pkg/PLAW-110publ343/pdf/PLAW-110publ343.pdf.

[28] Board of Governors of the Federal Reserve System and Department of the Treasury, *Treasury and Federal Reserve announce launch of Term Asset-Backed Securities Loan Facility (TALF)*, press release (3 Mar 2009), https://www.federalreserve.gov/newsevents/pressreleases/monetary20090303a.htm. The TALF program was huge, ultimately making $2.3 trillion of loans to banks. *Congress to Fed: Open the Books*, Bernie Sanders website (29 Apr 2009), https://www.sanders.senate.gov/newsroom/press-releases/congress-to-fed-open-the-books.

[29] The limit of $729,750 applied for 2008 through 2011. After that, the limit was lowered to $625,000. It stayed at $625,000 from 2012 through 2016 and then it started increasing again. *See*, FHFA, *2018 Report to Congress*, at 113 (11 Jun 2019), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_2018_Report-to-Congress.pdf.

[30] Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), Pub. Law No. 111-203, 124 Stat. 1376 (2010), https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

[31] DFA §§ 941-946; *see, e.g.*, 12 C.F.R. Part 43 (2019), https://www.govinfo.gov/content/pkg/CFR-2019-title12-vol1/pdf/CFR-2019-title12-vol1-part43.pdf.

- ***Ability to Repay:*** The DFA established requirements for mortgage lenders to determine a prospective borrower's ability to repay the loan for which he or she has applied.[32]

- ***Appraisal Independence:*** The DFA established new requirements for appraisal independence. Under the new standards, it is illegal for a lender to seek to influence an appraiser for the purpose of being able to make a loan.[33]

- ***CFPB:*** The DFA created the Consumer Financial Protection Bureau and transferred most financial-related consumer protection authority to it.[34]

- ***Ending "To Big to Fail":*** The DFA ostensibly eliminates the notion of "too big to fail" by restricting the power of the Federal Reserve to bail out failing banks.[35] However, there are differing views about whether the DFA prohibitions will actually prevent bailouts in the future.[36]

- ***Volcker Rule:*** The DFA prohibits various proprietary trading activities by banks.[37]

- ***Derivative Regulation:*** The DFA establishes regulation of swap markets, including centralized clearing and margin requirements of many swap contracts.[38]

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[32] DFA § 1411, 15. U.S.C. § 1639c (2017), 12 U.S.C. § 1639c (2017) https://www.govinfo.gov/content/pkg/USCODE-2017-title15/pdf/USCODE-2017-title15-chap41-subchapI-partB-sec1639c.pdf; 12 C.F.R. § 1026.43(c) (2019), https://www.govinfo.gov/content/pkg/CFR-2019-title12-vol9/pdf/CFR-2019-title12-vol9-sec1026-43.pdf.

[33] DFA § 1472, 15 U.S.C. § 1639e (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title15/pdf/USCODE-2017-title15-chap41-subchapI-partB-sec1639e.pdf.

[34] DFA § 1011; 12 U.S.C. § 5491 (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title12/pdf/USCODE-2017-title12-chap53-subchapV-partA-sec5491.pdf.

[35] DFA § 1101; 12 U.S.C. § 343(B)(i) (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title12/pdf/USCODE-2017-title12-chap3-subchapIX-sec343.pdf.

[36] *See, e.g.*, Afonso, G., M. Blank, and J. Santos, *Did the Dodd-Frank Act End 'Too Big to Fail'?*, Liberty Street Economics, Federal Reserve Bank of New York (5 Mar 2018), https://libertystreeteconomics.newyorkfed.org/2018/03/did-the-dodd-frank-act-end-too-big-to-fail.html; Kelleher, D., *BankThink – 'Too Big to Fail' Is Alive and Kicking*, American Banker (1 Aug 2018), https://www.americanbanker.com/opinion/too-big-to-fail-is-alive-and-kicking.

[37] DFA § 619, 12 U.S.C. § 1851 (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title12/pdf/USCODE-2017-title12-chap17-sec1851.pdf; 12 C.F.R. Part 44 (2019), https://www.govinfo.gov/content/pkg/CFR-2019-title12-vol1/pdf/CFR-2019-title12-vol1-part44.pdf.

- ***Eliminating the Regulatory Use of Credit Ratings:*** The DFA directed federal agencies to remove references to credit ratings from their regulations.[39] The DFA also included provisions intended to improve the integrity of credit ratings.

The DFA did not lengthen the time periods for commencing an action under the 1933 Act. At the time of the DFA's enactment, the problem with the short time limits had not even surfaced.

Apart from government initiatives to address perceived deficiencies uncovered by the mortgage meltdown and the financial crisis, the securitization industry launched its own initiatives. In 2009, the now-defunct American Securitization Forum (ASF) launched an initiative to revive the non-agency MBS market called "Project RESTART." The ASF produced a set of model representations and warranties, which it encouraged market participants to embrace. In releasing the model representations and warranties, ASF highlighted several key points:

- Representations and warranties allocate the risk of "defective" mortgage loans between the issuers of non-agency MBS and the investors who purchase them.
- The ASF model representations and warranties were designed to express "customary" representations and warranties and to provide a baseline against which investors and rating agencies could compare individual transactions.
- The ASF model representations and warranties were designed to "clearly allocate origination risks between issuers and investors and provide enhanced investor protections over what had been previously provided in 'pre-crisis' transactions."[40]

The successor to the ASF, the Structured Finance Association (SFA, f/k/a the Structured Finance Industry Group or SFIG) continued the effort under a new banner: "RMBS

[38] DFA §§ 721-774 (amendments to the Commodities Exchange Act, the Securities Exchange Act of 1934, and related laws).

[39] DFA § 939A.

[40] American Securitization Forum, *ASF Project RESTART—ASF Model RMBS Representations and Warranties*, at 2, 5 (15 Dec 2009).

3.0."[41] However, there has been no activity on the initiative in nearly two years and the organization seems to have abandoned it. The RMBS 3.0 initiative is conspicuously absent from the "key issues" page of the organization's website.

Some market participants have asserted that the risk retention requirements, the ability to repay rule, and the appraisal independence requirements (along with other DFA enhancements) largely fix the problems that existed in pre-meltdown non-agency MBS. Those enhancements certainly help to make the non-agency MBS investment landscape less dangerous for investors. However, they go only part of the way. Investor losses from the mortgage meltdown were primarily the result of misrepresentation and fraud. The DFA did not improve investor remedies for addressing misrepresentation and fraud after the fact.

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[41] Structured Finance Industry Group ("SFIG"), *RMBS 3.0 – A Comprehensive Set of Proposed Industry Standards to Promote Growth in the Private Label Securities Market* (6th ed., 9 Nov 2017) https://structuredfinance.org/wp-content/uploads/2019/05/RMBS-3.0-Sixth-Edition-Final-1109.pdf.