

Analyzing the Subprime Crisis: Causes and Solutions

What are the roots of the mortgage bust and how should government and industry map their way out of the crisis? Lawyers and top regulators debated those issues during a Friday panel, “Causes and Possible Remedies for the Current Subprime Lending Crisis,” sponsored by the ABA Section of Administrative and Regulatory Law at the ABA Midyear Meeting in Los Angeles.

Discussion began with a focus on what contributed to the housing bubble. Chicago lawyer Christine Franklin explained that following the dot-com bust, the country emphasized consumer spending as a means to economic health, which fueled the crisis.

Furthermore, federal banking regulators extended adjustable rate mortgages (ARMs) as temporary credit for customers expecting the early sale of property. ARMs were offered to subprime borrowers as “credit repair,” putting some of the least sophisticated borrowers into loans with the riskiest terms. At the same time, Federal Reserve Monetary policy encouraged spending rather than saving and the continuation of speculative lending, panelists noted.

Several solutions were discussed. Commissioner Preston DuFauchard, California Department of Corporations, noted that his state legislature is considering regulatory remedies, including requirements for better disclosure, face-to-face meetings between lender and borrower before foreclosure and the publication of specific, company-by-company loan data.

On the federal level, Kevin Petrasic from the Office of Thrift Supervision, discussed House and Senate proposals similar to those in California, and outlined other remedies, including national mortgage company licensing and borrower financial education programs.

Mary Jane Seebach of Countrywide Mortgage expressed caution: “We have to make sure that steps we take...stop practices that got us into trouble, but don’t put the entire market into jeopardy.” She shared particular concern about the provisions requiring pre-foreclosure face-to-face meetings and possible provisions that could turn mortgage companies “into landlords” for renters of foreclosed properties.

Seebach said it is a virtual certainty that tightened regulations will raise the overall cost of borrowing, but that the mortgage industry “supports transparency because we think it’s important everyone know what’s going on.... It’s the only way out [of the current crisis].”



Preston DuFauchard, commissioner, California Department of Corporations, shared regulatory remedies that are under consideration by the state legislature.

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