

## **Fitch Comments on NJ's Amendment to the 2002 NJ Homeownership Security Act**

NEW YORK--(BUSINESS WIRE)--Aug. 25, 2004--On July 6, 2004, Gov. James E. McGreevey of New Jersey, signed Senate Bill 279 (the amendment) that amends the New Jersey Homeownership Security Act of 2002 (the act). The amendment, which is effective immediately, addresses many concerns that have been expressed, particularly by mortgage originators, since passage of the act that became effective on Nov. 28, 2003. In particular, the amendment removes any reference to 'covered home loans' and 'flipping.' The 'total points and fees threshold' for high cost home loans is changed from 5% to 4.5%; and importantly, the Department of Banking and Insurance (DOBI) is now given more regulatory authority. However, the amendment does not change, or further clarify, the assignee liability or safe harbor issues. Thus, Fitch's policies and procedures in regard to 'high-cost home loans' in New Jersey, as detailed in our press release dated June 5, 2003, are not affected by passage of this Amendment.

The removal of covered home loans and flipping from the act, as per the amendment, should eliminate some impediments and uncertainties for existing and potential mortgage lenders in the State of New Jersey. According to the Act, covered home loans and flipping are conjoined concepts that effectively prevent mortgage lenders from refinancing an existing home loan made within the prior 60 months, if the new loan does not provide a 'reasonable, tangible net benefit' to the borrower. However, the act does not define reasonable, tangible net benefit. This lack of definition is largely seen as one of the primary reasons that lenders pulled back from the New Jersey mortgage market. Elimination of covered home loans and flipping should benefit the New Jersey mortgage market, since it can be expected that more lenders will now begin, or resume, making mortgage loans in New Jersey. However, as a reminder that some uncertainty still remains, the amendment also added a caveat that these deletions 'shall create no presumption that any home loan that is refinanced does not constitute an unlawful practice under P.L. 1960, c.39 (C.56:8-1 et seq).'

The amendment expands the number of high cost home loans that potentially fall under the scope of the act by decreasing the total points and fees threshold from 5% to 4.5% for loans that are \$40,000 or more. Since the amendment is effective immediately (i.e., as of July 6, 2004), this has implications for a lender's existing pipeline of loans. Lenders should reexamine their pipeline of loans, as well as their current policies and procedures for identifying predatory loans to ensure that this threshold change is properly accounted for. In addition, Fitch will continue to incorporate an assessment of a lender's predatory controls for New Jersey high cost home loans as part of its ongoing originator review process.

A third key area of the amendment eliminates regulatory uncertainty from the act. The Commissioner of Banking and Insurance, within the Department of Banking and Insurance (DOBI) and in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety is now empowered to promulgate and govern any provisions of the act and this amendment. Previously, their powers of interpretation and regulation were confined to certain, highly restrictive sections of the act. With this expanded authority, DOBI can be expected to issue interpretations of the act and amendment that creditors will be able to rely upon.

It should be noted that the amendment did not substantively change the assignee liability or safe harbor portions of the act. Therefore, to rate RMBS transactions, which contain any loans originated in New Jersey after the act's effective date of Nov. 28, 2003, Fitch will continue its policy of reviewing the results of an independent analysis of loans by an acceptable, unaffiliated third party that states that due diligence was conducted on the New Jersey loans. Please refer to Fitch's press release dated June 5, 2003 for further information.

Fitch will continue to monitor anti-predatory lending legislation and provide the market with

commentary on its rating approach.

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