

Standard & Poor's Addresses Massachusetts' Predatory Home Loan Practices Act

Analyst: Natalie Abrams, Esq. , New York (1) 212-438-6607; Maureen Coleman, Esq. , New York (1) 212-438-6626

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Beginning Nov. 7, 2004, Standard & Poor's Ratings Services will not permit "High Cost Home Mortgage Loans" governed by the Massachusetts Predatory Home Loan Practices Act (the Act) into its rated structured finance transactions. This determination is based on Standard & Poor's conclusion that purchasers of such High Cost Home Mortgage Loans may be subject to indeterminate liability, in which case Standard & Poor's would not be able to size the potential liability into its credit analysis.

The Act is in addition to existing Massachusetts anti-predatory lending regulations for "High Cost Home Loans." Loans that are High Cost Home Loans under the existing regulations (MA Regulation Loans), but are not High Cost Home Mortgage Loans under the Act (MA High Cost Home Mortgage Loans), will continue to be permitted in Standard & Poor's rated structured finance transactions, provided Standard & Poor's credit enhancement criteria are satisfied. (See "Standard & Poor's Implements Credit Enhancement Criteria and Revises Representation and Warranty Criteria for Including Anti-Predatory Lending Law Loans in U.S. Rated Structured Finance Transactions," published May 13, 2004 (May 13 Credit Enhancement Publication) and "Standard & Poor's Addresses Various Anti-Predatory Lending Laws Enacted Prior to January 2003" (Pre-2003 Laws Publication), published May 13, 2004. These articles are available on RatingsDirect, Standard & Poor's Web-based credit analysis system, at www.ratingsdirect.com. The articles can also be found on the Standard & Poor's Web site at www.standardandpoors.com. Select Credit Ratings, and then locate the articles under Credit Ratings Criteria.

Summary of the Act

The Act contains provisions applicable to MA High Cost Home Mortgage Loans. An MA High Cost Home Mortgage Loan excludes reverse mortgage transactions, but otherwise includes mortgage loans secured by the borrower's principal dwelling with terms that exceed an APR or points-and-fees threshold.

For lenders that choose to make MA High Cost Home Mortgage Loans subject to the Act, the Act prohibits certain terms and sets forth certain rules to which a lender must adhere. MA High Cost Home Mortgage Loans that fail to comply with the applicable requirements of the Act would violate the Act and could result in liability for the originator of the loan. Liability also could arise for an assignee or purchaser of an MA High Cost Home Mortgage Loan that violates the Act or other applicable law, as described below.

Violations of the Act

With respect to MA High Cost Home Mortgage Loans that violate the Act, assignee liability may not exceed amounts required to reduce or extinguish the borrower's liability under the loan, plus amounts required to recover costs, including reasonable attorneys' fees.

Violations of Any Applicable Law

In addition to the above, the Act suggests that if an MA High Cost Home Mortgage Loan was originated in violation of any applicable law, purchasers and assignees of such loan may be subject to indeterminate liability under the applicable law. Since it is not feasible to ensure that all MA High Cost Home Mortgage Loans have been originated in compliance with all applicable laws (the liability for violation of which is indeterminate), effective Nov. 7, 2004, Standard & Poor's will not rate structured finance transactions that include MA High Cost Home Mortgage Loans, in accordance with its criteria set forth below.

Summary of the Existing Regulations

As noted above, in addition to the Act, regulations governing Massachusetts High Cost Home Loans exist. These regulations (Mass. Regs. Code tit. 209, §§ 32.01 et seq.; §§ 40.01 et seq. (the MA Regulations) were enacted under the purview of the Massachusetts Truth-in-Lending Act and were not amended or superceded by the Act. Although the liability of purchasers and assignees for a loan that violates the MA Regulations may exceed the unpaid principal balance of the loan, such liability is capped.

Because the method of calculating points and fees under the MA Regulations differs from the method required under the Act, an MA Regulation Loan may not necessarily meet the definition of an MA High Cost Home Mortgage Loan under the Act (and vice versa). Thus, as stated in its Pre-2003 Laws Publication, Standard & Poor's will continue to permit in its rated structured finance transactions MA Regulation Loans that are not also MA High Cost Home Mortgage Loans under the Act. For such MA Regulation Loans, Standard & Poor's will continue to require that its credit enhancement criteria be satisfied.

Standard & Poor's Criteria

For loans governed by an anti-predatory lending statute, Standard & Poor's evaluates the impact the statute may have on the availability of funds to pay investors in its rated securities. In its analysis of the Act, Standard & Poor's followed its general approach set forth in its articles on evaluating predatory lending statutes. (See "Evaluating Predatory Lending Laws: Standard & Poor's Explains Its Approach," published April 15, 2003, and

the May 13 Credit Enhancement Publication and Pre-2003 Laws Publication on RatingsDirect and Standard & Poor's Web site.

First, Standard & Poor's will continue to require a representation and warranty from a seller into a securitization stating that "all loans were originated in compliance with all applicable laws, including, but not limited to, all applicable anti-predatory and abusive lending laws" (Compliance Representation).

Second, Standard & Poor's will require a representation and warranty from sellers stating that "no loan is a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the then-current version of Standard & Poor's LEVELS® Glossary, which is now Version 5.6 Revised, Appendix E), and no loan originated on or after Oct. 1, 2002 through March 6, 2003, is governed by the Georgia Fair Lending Act" (the Exclusion Representation). The Glossary is available on RatingsDirect and on the Standard & Poor's Web site.

If an issuer chooses to include any loans governed by an Assignee Liability Law (as defined below) in a rated transaction, exceptions to the Exclusion Representation should be identified. An Assignee Liability Law is an anti-predatory lending law that Standard & Poor's has reviewed and has concluded imposes assignee liability. Standard & Poor's has concluded that the Act is an Assignee Liability Law.

In addition, beginning Nov. 7, 2004, Standard & Poor's will exclude MA High Cost Home Mortgage Loans from its rated transactions. It also should be noted that Standard & Poor's is continuing to exclude the following loans from its rated pools: (i) High-Cost Home Loans, as defined in the New Jersey predatory and abusive lending law (NJ High-Cost Home Loans) and (ii) loans governed by the Georgia Fair Lending Act prior to its amendment on March 7, 2003 (GA Pre-Amendment Loans).

If any loan included in a rated pool is in breach of the Compliance Representation or the Exclusion Representation, Standard & Poor's will continue to require the seller to repurchase any such loan(s) at a purchase price that would make the securitization issuer whole, including any costs and damages incurred by the issuer in connection with such loan.

Third, Standard & Poor's will continue to require sellers into a securitization structure to demonstrate that their existing compliance procedures are effective to identify which loans fall into the various loan categories set forth in the applicable Assignee Liability Law, and, if a seller chooses to include in any rated pool loans governed by any Assignee Liability Law, to determine that all such loans do not violate the applicable Assignee Liability Law.

Fourth, Standard & Poor's will require sellers to identify on the loan level file submitted to Standard & Poor's for review in connection with a securitization transaction whether a loan to be included in a rated pool is a Home Loan in addition to the already required

disclosure of any Covered Loan and High Cost Loan, as applicable (as such terms are defined in the Glossary).

Fifth, Standard & Poor's requires that a seller into a securitization structure of loans governed by any Assignee Liability Law satisfy Standard & Poor's credit enhancement criteria, as more fully described below. This requirement may be waived if a seller has an outstanding long-term debt rating from Standard & Poor's equal to or higher than the highest rated security to be issued in the applicable transaction or the payment of principal of and interest on the rated securities is guaranteed (pursuant to a guaranty agreement, LOC, or similar agreement) by an entity with such a rating.

Standard & Poor's relies on representations and warranties that a loan complies with an Assignee Liability Law if Standard & Poor's concludes that the law has clear and objective standards. If, on the other hand, in Standard & Poor's opinion, such a law does not contain clear and objective standards, there is an increased risk that originators or sellers may inadvertently breach a compliance representation or warranty made in good faith. For the loans covered by these subjective laws, Standard & Poor's requires additional credit enhancement, as described in its May 13 Credit Enhancement Publication and its Pre-2003 Laws Publication.

Standard & Poor's will continue to require credit enhancement on MA Regulation Loans that are not also MA High Cost Home Mortgage Loans under the Act (which, as explained above, will be excluded from Standard & Poor's rated transactions effective Nov. 7, 2004).

Criteria for Loans Originated By National Banks, Federal Thrifts, and State-Chartered Banks and Thrifts

National Banks

Based on the analysis set forth in its prior releases regarding the final rule issued by the Office of the Comptroller of the Currency (OCC) Jan. 7, 2004, which amends 12 C.F.R. Parts 7 and 34 (the Rule), including analysis of the Rule, a Determination and Order (the Order) issued by the OCC on July 31, 2003, in connection with the Georgia Fair Lending Act, the Act and the MA Regulations, as well as relevant case law, Standard & Poor's has determined that assignees and purchasers of loans originated by national banks and their operating subsidiaries (National Banks) that would otherwise be governed by the Act and the MA Regulations would not be subject to liability for actions of National Banks under such laws. (For a discussion of Standard & Poor's approach to analyzing the Rule, see the citations below).

Therefore, Standard & Poor's will rate transactions that include MA High Cost Home Mortgage Loans if such loans are originated by National Banks. In addition, Standard &

Poor's will not require additional credit enhancement for inclusion in its rated structured transactions of MA Regulation Loans originated by National Banks.

For Standard & Poor's to rate transactions that include either MA High Cost Home Mortgage Loans or MA Regulation Loans, Standard & Poor's will continue to rely on the Compliance Representation, as discussed above. In addition, Standard & Poor's will require legal comfort in the form of an officer's certificate from the originator to the effect that the originator of the loans is a national bank or an operating subsidiary of a national bank, as defined in 12 C.F.R. Sec 5.3(j) and 12 C.F.R. Sec 5.34, respectively.

Federal Thrifts

For purposes of this section, federal savings associations and federal savings banks and their operating subsidiaries are referred to as Federal Thrifts.

In connection with Federal Thrifts, Standard & Poor's will apply the following criteria:

First, consistent with its general criteria described above, Standard & Poor's will not rate transactions that include MA High Cost Mortgage Loans originated by Federal Thrifts. Second, Standard & Poor's will rate transactions that include MA Regulation Loans originated by Federal Thrifts, provided Standard & Poor's additional credit enhancement criteria for MA Regulation Loans, as set forth above, are satisfied.

State-Chartered Banks and Thrifts and Their Operating Subsidiaries

In connection with state-chartered banks and thrifts and their operating subsidiaries, Standard & Poor's will apply the following criteria:

First, consistent with its general criteria described above, Standard & Poor's will not rate transactions that include MA High Cost Mortgage Loans originated by state-chartered banks and thrifts and their operating subsidiaries.

Second, Standard & Poor's will rate transactions that include MA Regulation Loans originated by state-chartered banks and thrifts and their operating subsidiaries, provided Standard & Poor's additional credit enhancement criteria for MA Regulation Loans, as set forth above, are satisfied.

For a fuller discussion of Standard & Poor's criteria regarding inclusion in its rated pools of loans governed by anti-predatory lending laws and originated by National Banks, Federal Thrifts, as well as state-chartered banks and thrifts and their subsidiaries, see the following publications, available on RatingsDirect and Standard & Poor's Web site:

"S&P Releases Criteria Regarding OCC Rule on Preemption of State Anti-Predatory Lending Laws," published March 3, 2004;

"Standard & Poor's Addresses OCC Rule Regarding Preemption of State Anti-Predatory Lending Laws," published March 3, 2004;

"Standard & Poor's Announces Position on OTS Preemption Pronouncements," published Nov. 25, 2003; and

"Standard & Poor's Announces Position on OCC's Preemption Order for the GFLA,"
published Oct. 3, 2003.

Standard & Poor's regularly reviews its criteria to keep current with changes in the law in the area of predatory lending. These criteria are not stagnant, but evolve over time. Standard & Poor's will continue to publish its criteria to keep market participants informed of any new approaches in this area.