

Standard & Poor's Addresses Indiana Anti-Predatory Lending Law

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Standard & Poor's Ratings Services announced today that it will not permit "High Cost Home Loans" governed by the Indiana 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 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. "Home Loans" under the Act, that are not High Cost Home Loans, are not, however, subject to indeterminate liability and will be permitted in Standard & Poor's rated structured finance transactions provided Standard & Poor's additional credit enhancement criteria are satisfied. The criteria announced today in this article will apply to Indiana loans governed by the Act that are originated on or after Jan. 1, 2005.

Summary of the Act

The Act contains provisions applicable to Home Loans and High Cost Home Loans. An Indiana Home Loan excludes open-end credit plans and reverse mortgage transactions, but otherwise includes mortgage loans secured by one- to four-family residential real property in Indiana that is or will be occupied by the borrower as the borrower's principal dwelling (Indiana Home Loan). A High Cost Home Loan is a Home Loan with terms that exceed an interest rate or points-and-fees threshold (Indiana High Cost Home Loan).

For lenders that choose to make Indiana Home Loans or Indiana High Cost Home Loans subject to the Act, the Act prohibits certain terms and sets forth certain rules to which a lender must adhere. Indiana Home Loans and Indiana High Cost Home 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 Indiana Home Loan or an Indiana High Cost Home Loan.

Indiana High Cost Home Loans

Violations of the Act: With respect to Indiana High Cost Home 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 Indiana High Cost Home Loan was originated in violation of any applicable law, purchasers and assignees of such loan may be subject to liability under the applicable law. Because it is not feasible to ensure that all Indiana High Cost Home Loans have been originated in compliance with all applicable laws (the liability for violation of which is indeterminate), for loans originated on or after Jan. 1, 2005, Standard & Poor's will not rate structured finance transactions that include Indiana High Cost Home Loans, in accordance with Standard & Poor's criteria set forth in this article.

Indiana Home Loans

With respect to all Indiana Home Loans, the Act permits a borrower to rescind a loan (in accordance with the federal Truth in Lending Act (TILA)) for a violation of law. Thus, with respect to Indiana Home Loans, because the exposure of purchasers is quantifiable, Indiana Home Loans (that are not Indiana High Cost Home Loans) may be included in Standard & Poor's rated transactions.

HOWEVER, it is unclear to Standard & Poor's whether the phrase "a violation of law" set forth in the Act (to be codified in Sec. 24-9-5-4 (C) of the Indiana Code) refers to a violation of the Act itself, a violation of TILA, or a violation of any other law, state or federal. It is not feasible for Standard & Poor's to review all laws to determine whether such laws have clear and objective standards for compliance, in accordance with its additional credit enhancement criteria set forth below and published previously. Therefore, Standard & Poor's will require additional credit enhancement for Indiana Home Loans originated on or after Jan. 1, 2005.

Standard & Poor's Criteria

Credit Enhancement Publication), on RatingsDirect, Standard & Poor's Web-based credit analysis system at www.ratingsdirect.com. The articles are also available on Standard & Poor's Web site at www.standardandpoors.com. Under Credit Ratings, select Criteria & Definitions and locate the articles under Ratings Criteria or SF Legal Criteria.)

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 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, Standard & Poor's will exclude Indiana High Cost Home Loans that are originated on or after Jan. 1, 2005. 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 before its amendment on March 7, 2003 (GA Pre-Amendment Loans). Furthermore, Standard & Poor's will exclude from its rated transactions all High Cost Home Mortgage Loans, as defined in the Massachusetts Home Loan Practices Act (MA High Cost Home Mortgage Loans), that are originated on or after Nov. 7, 2004. (For a discussion of Standard & Poor's criteria in connection with MA High Cost Home Mortgage Loans, see "Standard & Poor's Addresses Massachusetts' Predatory Home Loan Practices Act," published Sept. 20, 2004, on RatingsDirect and on the Standard & Poor's Web site.)

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 HighCost Loan, as applicable (as such terms are defined in Standard & Poor's LEVELS 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, 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.

Based on Standard & Poor's review of the Act, it will require credit enhancement for Indiana Home Loans that are not Indiana High Cost Home Loans. As noted above, effective Jan. 1, 2005, Standard & Poor's will exclude Indiana High Cost Home Loans from its rated structured transactions.

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, 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 certain anti-predatory lending laws 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.)

However, Standard & Poor's was unable to make this same determination for loans originated by National Banks that would otherwise be governed by the Act. Therefore, in evaluating rated structured transactions that include loans originated by National Banks under the Act, Standard & Poor's will apply the criteria set forth above and (i) will not rate transactions that include Indiana High Cost Home Loans originated by National Banks; and (ii) will require additional credit enhancement for Indiana Home Loans originated by National Banks.

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 evaluating rated transactions that include loans originated by Federal Thrifts under the Act, Standard & Poor's will apply the criteria set forth above and (i) will not rate transactions that include Indiana High Cost Home Loans originated by Federal Thrifts; and (ii) will require additional credit enhancement for Indiana Home Loans originated by Federal Thrifts.

State-Chartered Banks and Thrifts and Their Operating Subsidiaries

In evaluating rated transactions that include loans originated by state-chartered banks and thrifts and their operating subsidiaries under the Act, Standard & Poor's will apply the criteria set forth above and will (i) not rate transactions that include Indiana High Cost Home Loans originated by state-chartered banks and thrifts and their operating subsidiaries; and (ii) will require additional credit enhancement for Indiana Home Loans originated by state-chartered banks and thrifts and their operating subsidiaries.

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 the 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.