Article Title: ARCHIVE | Legal Criteria: Criteria For Rating Structured Finance Transactions That Include Loans Originated By Federal Thrifts Revised Data: (EDITOR'S NOTE: — This criteria article is no longer current. It has been superseded by the article titled, "Standard & Poor's Criteria For Analyzing Loans Governed By Anti-Predatory Lending Laws," published July 22, 2011.) Standard & Poor's Ratings Services is revising its criteria for rating structured finance transactions that include loans originated by federal savings associations, federal savings banks, and their operating subsidiaries (collectively, "Federal Thrifts") that are governed by anti-predatory lending laws.* Under the revised criteria as set forth below, Standard & Poor's will no longer apply its general anti-predatory lending law criteria previously published to loans governed by such laws and originated by a Federal Thrift in Arkansas; Cleveland Heights, Ohio; Colorado; District of Columbia; Florida; Illinois; Indiana; Maine; Massachusetts; Ohio; Oklahoma; Rhode Island; and Tennessee. Loans originated by a Federal Thrift and governed by an anti-predatory lending law in Georgia, New Jersey, New Mexico, and New York continue not to be subject to Standard & Poor's general anti-predatory lending law criteria. In summary, because of the concept of federal preemption, Standard & Poor's will rate structured finance transactions that include loans originated by Federal Thrifts in the above-listed jurisdictions, notwithstanding any of these jurisdictions' respective Assignee Liability Laws (as defined below), in which instances it will rely on certain representations and certificates, as more fully described below. For a law enacted or amended in the future that Standard & Poor's determines to be an Assignee Liability Law, Standard & Poor's will review the law to assess whether, in its opinion, the law itself or federal preemption insulates assignees of loans governed by the law and originated by Federal Thrifts from liability for legal violations by the Federal Thrift or certain other parties to the transaction. Background And Previous Criteria As a general matter, for loans governed by an anti-predatory lending law, Standard & Poor's evaluates the impact the law may have on the availability of funds to pay investors of its rated securities. Standard & Poor's reviews an anti-predatory lending law to see if it imposes liability on purchasers or assignees¶ (including a securitization trust) of mortgage loans simply by virtue of holding a certain type of loan covered by the law (assignee liability). With respect to anti-predatory lending laws that Standard & Poor's has reviewed and has concluded, in its opinion, impose assignee liability (Assignee Liability Laws), Standard & Poor's determines if it will rate a structured finance transaction that includes loans with associated assignee liability (Assignee Liability Loans) and, if so, whether satisfaction of its additional credit enhancement criteria is required. The general criteria for Assignee Liability Loans in a particular state are referred to in this article as the "General Anti-Predatory Lending Law Criteria" for that state. However, different types of institutions may be exempt from an Assignee Liability Law, either because of an exemption in the Assignee Liability Law itself or federal preemption. Therefore, when Standard & Poor's reviews an Assignee Liability Law, it considers whether federal law may displace application of the Assignee Liability Law in connection with loans originated by certain types of entities. If so, Standard & Poor's may decide not to apply its General Anti-Predatory Lending Law Criteria to Assignee Liability Loans originated by such entities. Until now, Standard & Poor's has applied its General Anti-Predatory Lending Criteria to an Assignee Liability Loan originated by a Federal Thrift unless the Office of Thrift Supervision (OTS) had issued a legal opinion concluding that the relevant Assignee Liability Law (or a substantial portion of the provisions thereof) was preempted for Federal Thrifts. (See "Standard & Poor’s Announces Position on OTS Preemption Pronouncements," published Nov. 25, 2003, on RatingsDirect. The article is also available on Standard & Poor's Web site at www.standardandpoors.com. Select Ratings and then Policies, Criteria & Definitions. The article can be found under the SF Legal Criteria tab.) To date, the OTS has issued legal opinions to this effect for the Assignee Liability Laws only in four states: Georgia, New Jersey, New Mexico, and New York (OTS Opinion States). As a result, Standard & Poor's has not applied its General Anti-Predatory Lending Criteria to Assignee Liability Loans originated by Federal Thrifts and secured by property in one of the OTS Opinion States. Revised Criteria For Assignee Liability Loans Made By Federal Thrifts The OTS recently issued an opinion letter to Standard & Poor's in which the agency concluded that "to the extent that other jurisdictions have ... predatory lending laws" similar to those in the OTS Opinion States, "the same preemption finding would apply based on the application of the same statutory and regulatory provisions, and applying the same prior precedents." See OTS Op. Ch. Counsel P-2008-1 (Feb. 20, 2008). Based on this letter, as well as a review of the OTS Opinion letters identified above, the Home Owners' Loan Act (12 U.S.C. Sections 1461 et seq.), related regulations (12 C.F.R. Sections 500-599), and case law, Standard & Poor's is revising its criteria for including loans originated by Federal Thrifts and governed by Assignee Liability Laws in its rated structured finance transactions. Effective today, Standard & Poor's will no longer apply its General Anti-Predatory Lending Law Criteria to any Federal Thrift-originated Assignee Liability Loan secured by property in the following jurisdictions: Arkansas; Cleveland Heights, Ohio; Colorado; District of Columbia; Florida; Illinois; Indiana; Maine; Massachusetts; Ohio; Oklahoma; Rhode Island; and Tennessee.§ Standard & Poor's will continue its current practice not to apply its General Anti-Predatory Lending Law Criteria to any Federal Thrift-originated Assignee Liability Loan secured by property in Georgia, New Jersey, New Mexico, and New York. If new Assignee Liability Laws (or amendments to existing Assignee Liability Laws) are enacted in the future, Standard & Poor's will review each enactment to assess whether, in its opinion, its General Anti-Predatory Lending Law Criteria will apply to Federal Thrift-originated Assignee Liability Loans governed by these new Assignee Liability Laws. For Standard & Poor's to rate transactions that include loans originated by Federal Thrifts if it has concluded its General Anti-Predatory Lending Law Criteria will not apply, Standard & Poor's will continue to rely on the representation and warranty that the loans included in the pool were originated in compliance with all applicable laws, including but not limited to, all applicable anti-predatory and abusive lending laws (Compliance Representation). 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 federal savings association (as defined in 12 C.F.R. Section 541.11) or an operating subsidiary of a federal savings association (as defined in 12 C.F.R. Section 559.2). 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. For a fuller discussion of Standard & Poor's criteria regarding rating structured finance transactions that include pools of loans governed by Assignee Liability Laws, 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, on RatingsDirect. The article is also available on Standard & Poor's Web site at www.standardandpoors.com. Select Ratings and then Policies, Criteria & Definitions. The article can be found under the SF Legal Criteria tab. Notes *For this purpose, "laws" refers to statutes and regulations, as interpreted by agencies and courts of law. ¶For this purpose, Standard & Poor's defines "assignee liability" broadly. In addition to laws with explicit assignee liability, Standard & Poor's considers a law to have assignee liability if a violation could result in the voiding or rescission of the loan for an origination-related violation of law even after the loan has been transferred to a purchaser or an assignee, including a securitization trust. §Until now, Standard & Poor's applied its General Anti-Predatory Lending Law Criteria to loans originated in Indiana and Rhode Island by some Federal Thrifts but not others. This was because the state law exemptions from the Assignee Liability Laws in those two states exempt some, but not all, Federal Thrifts. (In Indiana, federal savings associations are exempt, but their operating subsidiaries are not; in Rhode Island, federal savings associations and their wholly owned subsidiaries are exempt, but non-wholly owned subsidiaries of federal savings associations are not.)