

## Discussion Points

1. The majority of the Department of Banking and Insurance's budget is funded through assessments and fees. The Governor's proposed budget for the department indicates a 2.5 percent or \$1.8 million cut in General Fund spending from the current adjusted appropriation. Approximately half, or \$812,000, of these savings are realized through salary and wage reductions. However, the department has added four funded positions for FY2009.

- **Question:** Please reconcile the increased number of funded positions with the proposed reduction of \$812,000 in salary and wages.

**Response:** The question is correct in that the Department is funded through assessment of its regulated entities. Fees, fines and penalties collected by the Department are applied to the General Fund.

The Department did not add four positions. The FY 2009 budget proposes funding 469 positions (Budget Estimate FY 2009 column). Data in the revised FY 2008 column refers to the number of employees receiving full time pay checks during pay period two not the number of positions funded.

Comparison of the information on page D30 of the FY 2008 Budget, shows that the 495 positions were recommended to be funded. The FY 2009 Budget funds 26 less positions. The \$812,000 savings realized through elimination of funded positions results in a reduction in the dollars assessed from regulated entities and deposited for distribution through the General Fund.

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2. The proposed budget reduces the number of State employees through an early retirement initiative and layoffs. The Governor has proposed that the ability to hire employees to fill these vacant positions will be limited to approximately 10% of the positions vacated. The impact of this reduction of personnel on the department's programs and services is not clear.

- **Question:** How many current employees of the department are eligible for the early retirement initiative as proposed by the Governor? How many current employees of the department will be laid off and how many are expected to take advantage of the early retirement initiative? What is the current number of total employees in the department and what is the projected number of employees after this reduction in force? What services and programs provided by the department will be reduced or eliminated? How will the reductions affect the department's monitoring and oversight functions? How will the reductions in force affect the department's ability to fulfill its mission? How are the reductions reflected in funded positions in the proposed budget?

**How many current employees of the department are eligible for the early retirement initiative as proposed by the Governor?**

**Response:** Based on the assumptions in the budget for the projected \$135.9 million net ERI savings, 128 of Department staff will be eligible for participation.

**How many current employees of the department will be laid off and how many are expected to take advantage of the early retirement initiative?**

**Response:** At this time, the Department does not expect any lay-offs to occur. The savings assumes an overall 50% participation rate that varies by Department. The initial proposal is still under discussion and could be refined in the enabling legislation. Regardless, the Governor has stated that the backfills of participants will be limited to 10% on a Statewide basis.

**What is the current number of total employees in the department and what is the projected number of employees after this reduction in force?**

**Response:** The Department is currently authorized for 495 positions for Fiscal Year 2008. All positions are funded from assessments to the Banking and Insurance industries. The department does not anticipate a reduction in force through layoffs.

**What services and programs provided by the department will be reduced or eliminated?**

**Response:** The department does not anticipate eliminating any services or programs. However, reductions in personnel may result in an increased wait time to process licenses, collection of fines and penalties and our ability to provide timely responses to and investigation of consumer complaints.

**How will the reductions affect the department's monitoring and oversight functions?**

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**Response:** Further employee reductions will have an impact on our monitoring and oversight capabilities. The department will continue to lose experienced unit managers, supervisors and certified and trained Insurance and Financial Examiners; we expect to address any potential deficiencies so as to avoid effect on the Department's accreditation by national associations.

**How are the reductions reflected in funded positions in the proposed budget?**

**Response:** The proposed budget reflects a reduction of 26 funded positions from 495 to 469. This number does not reflect the anticipated additional loss of 64 employees due to the early retirement initiative.

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3. In March, 2008, RealtyTrac, an online marketplace for foreclosed properties (residential and commercial) released its February, 2008 U.S. Foreclosure Market Report. The report stated that New Jersey had 5,598 properties with foreclosure filings in February, 2008. This was a 9.49 percent increase from January 2008 and an 11.8 percent increase from February, 2007. As of March, 2008, there were approximately 1,300 licensed mortgage lenders in New Jersey. There has been a concern that an increased tendency of the mortgage lending industry to grant subprime residential loans has caused this increase in foreclosures. Borrowers are placed in the subprime residential loan market when they meet at least one of the following conditions: two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months; judgment, foreclosure, repossession, or charge-off in the prior 24 months; bankruptcy in the last 5 years; a Fair Isaac Corporation credit score of 620 or below; or a high percentage of debt compared to income that may limit the borrower's ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income (DOBI website).

As to the residential section of the mortgage market, there is a further concern that many of those with poor credit agreed to subprime mortgages with adjustable rates that are now adjusting to higher rates. These borrowers, when faced with higher rates, are no longer able to afford their adjusted mortgages. The concern is that this is the beginning of a trend that will increase foreclosures over the next few years.

- **Question:** a. Please detail how many residential mortgages issued by licensed mortgage lenders in the State are considered "subprime." What percentage of each lender's mortgage business exposure is represented by subprime mortgages and what percentage of total mortgages issued in the State does this represent? Please provide this detail for the two most recent years available.

**Response:** (a) (1) DOBI can provide information for calendar years 2006 and 2007. Information purchased by us from the Mortgage Bankers Association and based on its proprietary "National Delinquency Survey" indicates that, as of 12/31/2007, there were approximately 137,000 subprime loans being serviced in New Jersey, representing 10.62% of the total loans serviced in the State. As of 12/31/06, there were approximately 134,000 subprime loans or 10.96% of total loans serviced. Note: because the number of loans for 2006 and 2007 are based on survey responses submitted by loan servicers to the MBA, actual numbers could be greater than those reported.

(2) Without an exhaustive analysis of over 900 individual licensed mortgage bankers, we can only report aggregate numbers reflecting the percentage of mortgage loans made by New Jersey licensed mortgage lenders that was subprime for the two most recent years for which such data are available, i.e., 2005 and 2006. The figures below represent numbers of closed 1<sup>st</sup> mortgage loan transactions reported on Annual Reports submitted to DOBI. Please note that the number of loans closed in NJ during a given period does not have a direct relationship to the number of loans that may have been subject to servicing during that period. A closing happens only once, at the inception of a loan; servicing takes place over the whole span of the loan's term of years.

**2006:** Total loans closed: 380,000 (total dollar volume: \$88,372,000,000)

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125,000 (or 33%) were reported as subprime (total dollar volume: \$29,163,000,000)

**2005:** Total loans closed: 372,000 (total dollar volume: \$97,968,000,000) 124,000 (or 33%) were reported as subprime (total dollar volume: \$32,526,000,000)

In both years, the percentage participation in subprime loans among individual licensees varies from 0% to 100%. In both years, approximately 900 lenders reported subprime loans.

(3) We do not collect the data that would be necessary to state what percentage of total mortgages issued in the New Jersey during these periods the above-stated subprime activity figures represent. This is primarily because we do not collect closed loan activity data from federally chartered institutions or, since the decision in *Watters v. Wachovia*, from their operating subsidiaries. A rough sense of the proportion of subprime activity, however, may be gained by comparing the above numbers of total subprime loans closed, (125,000 in 2006 and 124,000 in 2005) with the total number of loans, both prime and subprime, reported to the MBA as being serviced during 2006 (1,226,097) and 2005 (1,174,792). Also, as noted above, subprime loans made up between 10% and 11% of all loans serviced in New Jersey in 2006 and 2007.

**b. Please detail how many subprime mortgages are issued by banks each year in this State. What percentage of each bank's mortgage exposure is represented by subprime mortgages and what percentage of total mortgages issued in the State does this represent? Please provide this detail for the two most recent years available.**

**Response:** Information supplied to DOBI indicates that New Jersey State chartered banks have had minimal if any involvement in originating subprime loans, or in investing in them. Consequently, this answer is short. Please also note that the subprime loan origination activity of federally regulated financial institutions and their subsidiaries is not reported to DOBI.

**c. Please comment on the department's ability to regulate the mortgage broker/lender and banking industries in this regard in light of the possible reduction in department staffing.**

**Response:** The ability of the Office of Consumer Finance ("OCF") within DOBI to regulate mortgage lenders subject to the New Jersey Licensed Lenders Act would be affected initially by the imposition of any large-scale layoffs and/or early retirement initiative. Significant retraining, promotions and certification of individuals would be necessary over a period of time to reestablish optimally effective levels of activity.

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4. In the Governor's proposed budget, the department discussed how it has implemented a new electronic payment system for assessments it charges to the industry. The department collected \$62 million of approximately \$92 million in payments due in 2008 through electronic lock boxes, eliminating the need to manually deposit over 2,500 payments.

- **Question:** Please indicate any estimated cost savings the department attributes to this streamlined approach to fee and assessment collection. Please indicate what, if any, revenue increase occurred because the State collected those fees and assessments in a shorter time span. Please elaborate on any future changes the department plans to improve the efficiency of the collection of fees and assessments.

**Response:** Use of the lock box began in FY 07 and was greatly expanded in FY 08. In FY 2008 \$92.3 million in assessments were processed via the lock box. Over 6100 bills were mailed and over 4300 payments received by the lock box system. The efficiencies gained by this system along with the online processing and payment with the Insurance licensing system provided by the NAIC have allowed us to reduce the fiscal staff by one third. One individual retired and was not replaced for an annual savings of \$67,800 in salary and benefits. Another individual was transferred to another section of the department. The lock box account is swept electronically twice a day by the Treasury Department making the receipt of the funds more efficient. Over \$60,000,000 was deposited in Treasury accounts at least one day faster than we could process the checks manually.

We are currently evaluating which of our licensing transactions are suitable for online processing with online payment. In February 2008 we implemented online processing with online payment of Real Estate transfers and terminations. These two transactions generate over 20,000 manual transactions for our licensing section with over 10,000 payments per year. The new service has been well received by the Industry.

In May of this year we hope to implement online processing and payment for the registration and termination of mortgage solicitors. Again over 20,000 manual transactions and 10,000 payments are associated with the processing of solicitors.

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5. Pursuant to the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-22 et seq.) (HOSA) the department was directed to enforce the act's prohibitions against certain predatory lending practices in the residential mortgage market. The act categorizes residential mortgage loans as "home loans" or "high-cost home loans," depending on the loan terms, and applies certain restrictions on lending practices to each category of loans. Generally, these restrictions are designed to prevent loan terms that present an unreasonable risk of the homeowner's ultimate default and resulting loss of equity in the home through foreclosure. In addition, the department is directed to implement, in consultation with the Divisions of Consumer Affairs and Civil Rights in the Department of Law and Public Safety, a program of consumer protection to protect vulnerable consumers against predatory lending practices. However, in Watters v. Wachovia Bank, N.A. the United States Supreme Court held that states are preempted from using their inspection and regulatory powers with respect to national banks. Thus, on the basis of this decision and prior opinion letters issued by federal regulatory agencies, it appears that HOSA is preempted from applying to any financial institution that is chartered on a federal level.

- **Question:** a. Please outline the status of the HOSA consumer education program required to be established by the department, including: (1) a general description of the activities conducted through the program; (2) partners in the program (3) the number of staff positions involved in implementing the program; (4) the average number of public outreach efforts conducted annually as part of the program, and (5) funds dedicated to the program, by department.

**Response:** a (1) Please outline the status of the HOSA consumer education program required to be established by the department, including: (1) a general description of the activities conducted through the program:

DOBI activities implementing N.J.S.A. 46:10B-32, provide for a consumer counseling and awareness program to inform the public about predatory fees and charges and to encourage the informed and responsible use of credit.

Since October, DOBI has organized and participated in 14 Community Forums across the state bringing together DOBI and NJHMFA staff, HUD representatives, mortgage bankers, homelessness prevention organizations and credit counselors to educate consumers in vulnerable populations regarding changes in the mortgage market, identifying and explaining predatory lending and encouraging reporting of questionable activity to the Department.

DOBI produced and distributed pamphlets in English and Spanish on all aspects of mortgage lending, including potential scams aimed at borrowers. It has updated its first time homebuyer publications and its website with prominent sections with regard to predatory lending and how to avoid it.

DOBI continues to contract with NJ Citizen Action to provide presentations on predatory lending issues. DOBI guides the content and locations of these

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presentations. We use this approach to ensure that our efforts are targeted at vulnerable populations through the most effective use of resources.

DOBI has an ongoing program on financial literacy and the responsible use of credit, making presentations at the community level in a variety of settings. The topics cover the financial services provided by our regulated entities: banking, lending, insurance, and real estate. Where appropriate, the presentations address predatory lending practices and warn consumers about abusive loan terms.

In addition, in cooperation with the banking and financial services industry, DOBI conducts financial awareness presentations at schools across the State. In the fall of 2006, spring and fall of 2007, and in the spring of 2008, DOBI led an ambitious program of financial awareness presentations to schools around the state, reaching thousands of students. We plan to continue these programs twice a year in cooperation with trade organizations of the banking and mortgage industry. These presentations focus on the responsible use of credit and heighten the awareness of students to the potential financial impact of the terms of a range of financial contracts.

### **(2) partners in the program:**

Our partners are numerous and include, NJ Citizen Action, volunteer representatives from the ranks of depository institutions, credit unions, and licensed lenders operating in New Jersey, as well as licensed debt adjusters, HUD-certified housing counselors, the NJHMFA, HUD, local officials, members of the legislature, and high schools throughout the State.

### **(3) the number of staff positions involved in implementing the program:**

DOBI staff employed in the Division of Banking is temporarily assigned to implement these activities on an as-needed basis. The DOBI Office of Public Affairs Education Unit has 10 staff members who are dedicated full-time to consumer information and education including HOSA activities.

### **(4) the average number of public outreach efforts conducted annually as part of the program:**

Since the beginning of FY 08 the Department has organized or participated in 14 community forums across the state. Our Financial Literacy Awareness school program has been held in 295 schools before over 13,000 students. Later this spring visits will be made to an additional 90 schools and over 5,500 students. In addition, DOBI has contracted with NJ Citizen Action to revamp its curriculum in light of the recent credit crises and to conduct 12 sessions across the state designed to inform and empower community leaders and activists and other government agencies in assisting their constituencies.

### **and (5) funds dedicated to the program, by department:**



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Apart from the allocation of 40% of all HOSA penalties collected as described above, there is no separate DOBI budget item funding these activities. Thus, DOBI program activities are funded under the overall operating budget.

**b. What percentage of the residential mortgages issued in the State is subject to compliance with HOSA? How does the department see its future role with respect to protecting residents from predatory mortgage loans, given the prohibitions on applying the State's inspection and regulatory powers to federally chartered financial institutions? Does the department have any specific recommendations for changes to HOSA, to make it more effective in preventing predatory lending?**

**What percentage of the residential mortgages issued in the State is subject to compliance with HOSA?**

(b) There are several ways to address the question of what percentage of residential mortgages in New Jersey must comply with HOSA. The narrowest answer is that loans must comply with HOSA when they cross the law's fees and points threshold. Only a tiny percentage of loans made by licensed lenders do that. For instance, in 2005, 4 HOSA loans were reported, valued at \$484,720 in the aggregate. Those 4 loans represented one one-thousandth (or 0.001%) of the total of loans closed in the State by licensed lenders in 2005. A broader answer is to say that all loans made by licensed lenders must comply with the restrictions established in HOSA, and it is a mark of the success of the law that the vast majority of such loans comply by not crossing the fees and points threshold above which HOSA provisions come directly to bear. The answer that the question appears to be driving at, however, is that, in the wake of *Watters v. Wachovia*, federally regulated financial institutions and their operating subsidiaries may be shielded from HOSA by federal preemption. The proportion of loans subject to HOSA in that sense may be roughly illustrated by some of the figures noted above. For instance, in 2006, licensed lenders closed 380,000 residential loans on New Jersey real property, compared to a total of 1,226,097 of all types of loans originated by all lenders that were being serviced in the State in the same year.

**(c) How does the department see its future role with respect to protecting residents from predatory mortgage loans, given the prohibitions on applying the State's inspection and regulatory powers to federally chartered financial institutions?**

DOBI anticipates a continued important role in the regulation of mortgage lending in New Jersey, despite *Watters v. Wachovia*. The New Jersey based licensee pool remains relatively healthy, while several giant licensees based in other States have failed. The nation's largest non-bank mortgage lender, Countrywide, is a licensee. New mortgage regulations currently being proposed by HUD and the Federal Reserve Board may grant the States an enforcement role, as was urged by Governor Corzine in a letter last summer to Ben Bernanke, Chairman of the Federal Reserve. The new federal regulations would provide a federal floor of protections that may also conceivably permit States to enforce their own additional measures. Furthermore, a national mortgage licensing system ("NMLS"), that has been developed by the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") and is currently being implemented 17 other states, will offer advantages that may attract new

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entrants into the state licensing system across the country. New Jersey is intending to join the NMLS in 2009.

**Does the department have any specific recommendations for changes to HOSA, to make it more effective in preventing predatory lending?**

HOSA was enacted to combat the predatory lending evils that were prevalent 10 years ago. As noted above, it has been extremely effective at reducing predatory fees and points attached at the front end of a loan transaction, in New Jersey. HOSA does not, however, address predatory lending that targets borrowers at later points downstream in the life of a loan, and particularly at the time(s) at which an adjustable rate is reset. We have been considering amendments to HOSA that would pinpoint that problem by including a new class of loans within the existing definition of "high cost home loans" that are afforded the protections of HOSA. Thus, any loan that, by its own terms, would require or permit a rate reset that would or could effectuate a rate increase above a stated threshold would also be a "high cost home loan." In addition, outside of HOSA but in accordance with DOBI Bulletin 07-01, we are developing a rule proposal to amend our advertising regulations and our application disclosure requirements to ensure that the terms and also the dangers of loans with adjustable rates and other exotic features are clearly and plainly stated at the onset of the loan transaction.

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6. P.L.1992, c.161 (C.17B:27A-2 et seq.) established the New Jersey Individual Health Coverage Program (IHCP) to provide access to a broad choice of private health insurance products to any New Jersey resident who does not have access to employer-based or other group health coverage. The act, which was part of a major health insurance reform effort, requires all carriers, as a condition of issuing health insurance in the State, to offer individual health benefits plans through the IHCP or pay a share of losses incurred by other carriers in that market. Pursuant to the act, the IHCP board created five standardized health benefits plans, which are guaranteed-issue and guaranteed-renewable. The act requires all plans to be community rated, meaning that carriers cannot vary rates based on health status, age, claims history, geographic location, or any other risk factor. Since the mid-1990's, the IHCP market has experienced a steady increase in premiums and a change in composition toward older and potentially more expensive enrollees. Various legislation has been proposed to modify the IHCP to maintain the level of coverage for the most number of individuals while providing for a reduction in rates. Some modifications that have been proposed include: reducing the number of plans offered under IHCP; allowing carriers to offer rates based on certain demographic information; and, providing for a mandated cost differential.

- **Question:** Please explain the department's efforts to date in addressing the issues of affordability and the decline in enrollment associated with the IHCP. Does the department have any estimates for rate structures under modifications, such as those referenced above, or others? If the department does have estimates, please provide them.

**Response:** Allowing carriers to use certain demographic information such as age for rating purposes would make coverage much more affordable for younger applicants and make coverage somewhat less affordable for older applicants. As has been demonstrated with the Basic and Essential Health Care Plan that allows the use of demographic information for rating purposes, younger applicants are willing to buy coverage when it is perceived to be good value. In fact, enrollment in the individual market has increased since the advent of the Basic and Essential plan, from 78,513 as of 4Q04 to 87,741 as of 4Q07. As an example, single coverage under a \$30 copay HMO plan effective March 1, 2008 with Horizon would cost \$487.40 per month. A 25 year old male can buy single coverage under Horizon's Basic and Essential Health Care Plan without a rider for \$132.70 and with a rider for \$166.92 per month.

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7. P.L.2001, c.368 requires health insurance carriers to offer a limited health care services plan through the IHCP. The Legislature's intent in establishing this plan, known as the Basic and Essential Health Care Services Plan (the "B&E Plan") was to create a plan that was more affordable, even though it was not as generous in coverage as the five standard plans. The act permits carriers to rate the B&E Plan by using factors for age, gender, and geographic location, but by no more than a 3.5 to 1 ratio between the highest and lowest rated plans.

- **Question:** Please comment on the effectiveness of the Basic and Essential Health Care Services Plan in providing affordable health insurance coverage and reducing the number of uninsured New Jersey residents. How many of those that choose coverage with the B&E plan also choose to select a rider to that plan?

**Response:** The Basic and Essential Health Care Services plan has led to increased enrollment in the individual market. Of the 87,741 lives covered as of 4Q07, 30% of the enrollment, 26,782 lives, are enrolled under various basic and essential plans. The use of modified community rating, and in particular, age rating, has encouraged younger persons to enroll for coverage. While some of the persons currently covered under Basic and Essential Health Care Plans were previously covered under other standard plans, the Basic and Essential Health Care Plan was a more affordable option, and the availability of such option may have prevented some people from dropping coverage entirely. The availability of riders that increase the coverage under the Basic and Essential Health Care plan has made the plan a more attractive option. As of 4Q07, 19,402 of the 26,782 persons enrolled under Basic and Essential Health Care Plans have purchased plans with an increasing rider.

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8. The "New Jersey Medical Care Access and Responsibility and Patients First Act," P.L. 2004, c.17 (the Act), provides a comprehensive set of reforms affecting the State's tort liability system, health care system, and medical malpractice liability insurance carriers. The goal of these reforms is to ensure that health care services continue to be available and accessible to residents of the State.

The act established the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA), the purpose of which is to provide medical malpractice liability insurance premium relief for certain specialized health care providers in the State who have experienced or are experiencing a liability insurance premium increase. Eligibility for the relief is determined by class of practitioner, whose average medical malpractice premiums as a class is in excess of a particular amount per year, as established by the Commissioner of Banking and Insurance by regulation.

The MMLIPA fund was comprised of revenue collected for the three years that the fund was active, 2004 – 2007. The revenue was derived from a \$3 annual surcharges paid on or by employees who are subject to the "unemployment compensation law" and \$75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors, and attorneys, unless exempted under the law.

The fund, which stopped collecting revenue on June 30 2007, was administered by the department. According to the proposed budget, the fund balance on July 1, 2007 was \$18.6 million and revenues collected are estimated to be \$1.7 million, providing a total of \$19.4 million to be expended in FY 2008. According to the proposed budget, the fund is anticipated to expend the remaining \$19.4 million by June 30, 2008 (page H-20).

- Question:** Since the program was not continued past its July, 2007 expiration date, please detail how the \$19.4 million surplus is to be expended. Please indicate if the MMLIPA successfully effected the retention of key medical specialties in the State and if the implementation of the MMLIPA has stabilized the market. Please provide any assessment results conducted on the program or plans for evaluation currently being conducted. How has the medical malpractice insurance market place changed since 2004?

**Response:** Although the program funding and revenue collections were completed in Fiscal Year 2007, the 2006 premium subsidy payments for the fund were expended in Fiscal Year 2008 as listed:

Physicians	\$16,244,367
Student Loan Assistance	\$ 949,010
Human Services	\$ 1,138,812

As in the prior two years of the program, DOBI held a minimal amount of funds in reserve for the resolution of physician eligibility appeals in addition to any amounts refunded to the fund. Therefore, a balance of \$276,839 remains in the account from last year.

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Additional revenue was collected in Fiscal Year 2008 in the amount of \$414,863 as follows:

Employee Surcharge	\$390,930
Assessments	\$ 5,025
Attorney Fees	\$ 18,903

These funds have not been transferred to the DOBI account as this program has expired.

- **Please indicate if the MMLIPA successfully effected the retention of key medical specialties in the State and if the implementation of the MMLIPA has stabilized the market.**

In a Public Notice issued on July 23, 2007 regarding the Medical Malpractice Liability Insurance Premium Assistance Fund – Premium Subsidy for 2006, the Department advised that it had preliminarily determined that there continues to be a threat to adequate access to care with respect to OB/Gyns, Neurosurgeons and Diagnostic Radiologists – mammography only. The Department, in accordance with the regulations, conducted annual analyses through the collection of premium data from medical malpractice insurers and data obtained concerning physician supply from the Rutgers Center for State Health Policy. The Department also consulted with the Commissioner of Health and Senior Services, individual practitioners and specialty trade associations. The Department reimbursed 1,213 practitioners over \$13 million for the 2004 premium assistance in Fiscal Year 2006; 1,285 practitioners almost \$16 million for the 2005 premium assistance in Fiscal Year 2007; and 1,164 practitioners over \$16 million for the 2006 premium assistance in Fiscal Year 2008. Each premium assistance recipient agreed to remain in practice in their specialty at their then current level of practice (full time or part time) for a period of two years following payment of the subsidy. Establishing a “cause and effect” relationship to the funds distributed by MMLIPA is problematic because of the number of factors involved in individuals’ decisions to cease practicing in their specialty.

Because of the difficulty in reliably discerning the relative impacts of the many factors in a provider’s decision to enter, remain in or leave a specialty, the extent to which the relatively stable market conditions of today are a result of the MMLIPA fund is also unclear. Medical trade associations and practitioners report that the current problem to maintain sufficient practitioners in the three specialties (OB/Gyns, Diagnostic Radiologists and Neurosurgeons) is attracting new specialists to replace those who retire. It is also possible that the program coincided with a cyclical return to softer market conditions that occurred primarily for other reasons. What is most clear is simply that MMLIPA payments were sizeable in dollar amount and that receipt of them

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was dependent on the provider remaining in practice for at least two subsequent years. Presumably, this had a positive impact on the market.

- **Please provide any assessment results conducted on the program or plans for evaluation currently being conducted. How has the medical malpractice insurance market place changed since 2004?**

Since 2004, the price of medical malpractice liability insurance generally has begun to stabilize, albeit at a relatively high level. The weighted average increase in medical malpractice insurance premiums in 2005 was 13.12%; in 2006 it was 5.89%; in 2007 was 0.28%; and in 2008 was 0.12%. Since medical malpractice rates are often filed to be effective January 1 of the year, it appears that prices in 2009 may likely remain relatively stable, the cost of coverage for neurosurgeons, obstetricians and diagnostic radiologists, however continued to increase in 2008 faster than average. This may be due to national trends of increasing claim severity despite relatively stable claim frequency.

2007 The Department has not conducted an assessment of the MMLIPA Fund program post due to its expiration.

**What is the average assistance amount paid per physician?**

The average assistance amount paid per physician to date must be calculated as a "weighted average" because the Premium Subsidy for 2004 was a fixed flat amount (\$10,873) and the Premium Subsidies for 2005 and 2006 were fixed flat percentages (13.8% and 16.0%) of the average premium base rate per eligible specialty. The average assistance amount was \$12,442.

**What is the average assistance amount paid per specialty?**

For 2004, the first year of the program, a flat amount was reimbursed to all eligible applicants. For 2005 and 2006, the amount varied by specialty based on the average expenditure for coverage.

	2004	2005	2006
Diagnostic Radiologists - mammography only	\$10,873	\$5,753	\$6,678
OB/Gyns – gynecology alone excluded	\$10,873	\$16,006	\$18,582
Neurosurgeons	\$10,873	\$17,821	\$20,689

**What percentage of a specialist's premium is covered through the assistance?**

The Premium Subsidy for 2004 was a fixed amount of \$10,873 for all qualified applicants. After this first year of the program, DOBI provided the subsidy based on the

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average expenditure for coverage in each physician class. The subsidy for 2005 and 2006 was a fixed percentage (13.8% and 16.0%) of the average 2005 and 2006 premium base rates for OB/Gyns, Neurosurgeons and Diagnostic Radiologists – mammography only.

### **Are there any plans to expand the program to other specialties beyond those currently eligible for assistance?**

The program has terminated per the Legislative expiration date.

### **Does the Department review the success of the program? If so, how?**

The Department, in accordance with the regulations, conducted an annual analysis through the annual collection of premium data from medical malpractice insurers and data obtained concerning physician supply from the Rutgers Center for State Health Policy. The Department also consulted with the Commissioner of Health and Senior Services, individual practitioners and specialty trade associations. The Department reimbursed 1,213 practitioners over \$13 million for 2004 premium assistance. That number increased to 1,283 in the second year of the program, with disbursements of almost \$16 million. In the third year, there were 1,164 practitioners, with disbursements of over \$16 million. Each premium assistance recipient agreed to remain in practice in their specialty at their then current level of practice (full time or part time) for a period of two years following payment of the subsidy. Establishing a "cause and effect" relationship to the funds distributed by MMLIPA is problematic because of the number of factors involved in individuals' decisions to cease practicing their specialty. Medical trade associations and practitioners report that the current problem to maintain sufficient practitioners in these specialties (OB/Gyns, Diagnostic Radiologists and Neurosurgeons) is attracting new specialists to replace those who retire.

### **Are there any indications that doctors are experiencing any significant financial relief from the subsidy?**

Since 2004, the price of medical malpractice liability insurance generally has begun to stabilize, albeit at a relatively high level. The weighted average increase in medical malpractice insurance premiums in 2005 was 13.12%; in 2006 it was 5.89%; in 2007 was 0.28%; and in 2008 was 0.12%. Since medical malpractice rates are often filed to be effective January 1 of the year, it appears that prices in 2009 may likely remain relatively stable, the cost of coverage for neurosurgeons, obstetricians and diagnostic radiologists, however continued to increase in 2008 faster than average. This may be due to national trends of increasing claim severity despite relatively stable claim frequency.

### **What other programs are available to doctors in the State to offset the high cost of medical malpractice insurance?**

The Department is not aware of any other programs in New Jersey that offer premium assistance to New Jersey practitioners.

### **Do any other states have a similar program to assist in the payment of malpractice premiums?**



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The Department is not aware of any substantially similar state-run programs that offer direct premium relief to practitioners. According to the Insurance Information Institute's web site (February 2007 update on Medical Malpractice), Pennsylvania and Maryland have enacted legislation to provide medical professionals with assistance in purchasing medical malpractice liability insurance coverage. Pennsylvania's Medical Care Availability and Education of Error fund ("Mcare") requires Pennsylvania practitioners to purchase at least \$1 million in coverage, a portion of which can be obtained from this excess insurance program. Mcare is expected to be taken over by private insurers by 2011. Maryland's program is funded by a 2% HMO premium, which is distributed to medical malpractice insurers "in return for keeping rates down". "Premiums to medical providers in high risk specialties may not exceed more than 5 percent of premiums for the previous 12-month period." The program, which reportedly received \$35 million in 2007, will end in 2008.

## Discussion Points (Cont'd)

9. Beginning May 12, 2006, the State of New Jersey mandated through a new insurance law the availability of continued health benefits coverage, up to age 30, for certain qualifying dependents under their parents' coverage, pursuant to P.L.2005, c.375 (C.17:48-6.19 et al.). This so-called "Chapter 375 Coverage" or "Under 30" law applies to large and small group health benefits coverage issued by insurance carriers in this State, typically consisting of employer- or union-purchased policies covering employees/members, and the State Health Benefits Program (SHBP) providing State and other public employee benefits coverage.

When available, "Chapter 375 Coverage" provides dependents the opportunity to voluntarily elect continued coverage beyond the age at which their dependent coverage would normally cease pursuant to the specific terms of the applicable coverage contract, which usually occurs between ages 19 and 23, sometimes known as "aging out." This extended coverage can be continuous, first elected at the point of aging out and lasting until a dependent's 30<sup>th</sup> birthday, or it can be elected sometime later after aging out and experiencing a gap in coverage under the contract. Further, until a dependent's 30<sup>th</sup> birthday, "Chapter 375 Coverage" can be dropped and reinstated an unlimited number of times, regardless of the length of any accompanying gap in coverage.

- **Question:** Please indicate what, if any, problems have occurred with the implementation of the "Under 30" law. Does the department recommend any legislative initiatives to alleviate these particular issues? Please provide any available data concerning the number of individuals who are impacted by having to choose between COBRA and coverage pursuant to the State's "Under 30" coverage law. Please provide data on how many individuals are being covered under the law.

**Response:** The Department's best estimate is that 8,000 persons are currently covered by Dependent Under 30 (DU 30) continuation and that a total of 12,000 persons have been so covered since the law became effective. The Department's experience is that the many eligibility requirements for DU30 coverage causes a lack of eligibility for a large number of dependents. Easing some of the eligibility requirements, such as the requirements that the dependent actually age out of his parent's coverage and have no dependents of his own, should be considered. For example, we are aware of a number of situations in which a child is eligible for coverage under the health benefits plans of both parents but is actually covered under the plan of the parent with a self funded plan. When that child ages out of the self funded plan, he is not provided with DU30 rights under the plan of the parent who has the insured health benefits plan because he/she was not covered by and did not age out of that plan. In other cases, a child may give up coverage under a parent's plan and elect student coverage supplied by the college until he/she graduates. If that dependent seeks DU30 rights at the end of his student coverage, he/she is denied because he did not age out of his parent's plan. Relaxing other present restrictions on access to DU30 coverage might also be considered.

Although we do not collect data on COBRA enrollment, we note that the COBRA rate of 102% of the single rate is significantly higher than the DU30 rate for carriers in the commercial market which ranges from 60 to 80% of the single rate. Thus if premium is the primary determinant, a dependent who ages out will elect DU30 coverage instead of COBRA coverage. The current commercial rate may be adequate, since none of the commercial carriers have to date filed an increase. Just the opposite is true with respect

**Discussion Points (Cont'd)**

to the State Health Benefits Plan (SHBP) which has priced DU30 coverage at 110% of the single rate. Again assuming price is the most significant factor in the coverage decision, a dependent aging out from the SHBP will always elect COBRA instead of DU30. If SHBP dependents enrolled at the same rate as commercial dependents, there would be approximately 2,400 additional dependents enrolled in DU 30 coverage. COBRA coverage is limited to 36 months for those who age out.

## Discussion Points (Cont'd)

10. Pursuant to the "Automobile Insurance Cost Reduction Act," P.L.1998, c.21, the commissioner was directed to establish standards, through regulation, for redrawing the almost 60-year-old territorial rating plan used in determining automobile insurance premiums throughout the State, no later than January 1, 2000. On February 4, 2008, Territorial Rating Equalization Exchange Amendments to N.J.A.C.11:3-16A.1, 16A.2 and 16A.4 became effective. These regulations updated and completed the establishment of the Territorial Rating Equalization Exchange (TREE), as part of the overall goal to revamp territorial rating in the State.

TREE will provide an equalization system for automobile insurers to encourage them to write in all areas of the State. Under TREE, premiums received by an insurer that writes a policy in one of the zip codes designated by the TREE governing committee as eligible for TREE reimbursement, will be supplemented by an equalization payment, thus encouraging insurers to write automobile insurance in historically underserved geographic areas.

According to the regulations, TREE will be an unincorporated association operating on a no-profit, no-loss basis and will be administered by a 12 member governing committee. The governing committee will consist of 10 members of the automobile insurance industry, one public member appointed by the commissioner and the commissioner or his designee as a non-voting member. The TREE governing committee will develop a "Plan of Operation" to be approved by the commissioner. The plan must include a methodology for determination of the zip codes eligible for TREE reimbursement, methods and means for the collection, investment and disbursement of funds and a methodology for determination of the amount of the equalization charge.

The proposed budget indicates that implementation of TREE has begun and will occur over a period of one to two years (page D-26). However, the regulations state that as soon as six members of the committee have been appointed, the committee has 60 days to complete a plan.

- **Question:** What is the timeline for the appointment of members to the TREE Committee? What will be the cost to the department to administer the plan for FY2009, FY2010? What is the long term time range for administration of the TREE plan?

**Response:** The Commissioner has received recommendations and will be appointing the TREE Governing Committee members in the near future.

Administration costs of the TREE mechanism will be paid from the fund managed by the Governing Committee. This fund will be supplied by a portion of existing premiums collected by private passenger auto insurers doing business in New Jersey. No direct costs to the Department are anticipated. The size of the administration budget will be unknown until the Governing Committee solicits bids for consultant services. However, based on the operations of similarly functioning mechanisms such as the Auto Insurance Risk Exchange (AIRE), administration costs are expected to constitute a minute percentage of the total fund amount.

**Discussion Points (Cont'd)**

The Department expects TREE operations to continue indefinitely. TREE does not address a transient problem, but rather a systemic condition resulting from the combination of substantial differences in insurance loss ratios in various areas of the State and a statutory mandate to moderate the impact of those differences on insurance premiums. The Department does not foresee a time in which loss ratios would no longer differ among disparate areas of the State, but does hope that, over time, these differences will continue to narrow as a result of ongoing competition in the marketplace. Neither does the Department currently foresee statutory changes that would obviate the need for TREE, though naturally the potential for such changes does exist.

## Discussion Points (Cont'd)

11. Over the past 20 years, there have been numerous extreme weather events in the United States; for example, Hurricane Andrew in Florida, Hurricane Iniki in Hawaii, and Hurricane Katrina along the Gulf Coast. In addition, industry experts, using catastrophic modeling, began to predict that the Northeast part of the country is statistically likely to endure a catastrophic weather event in the relatively near future. Therefore, the combination of these weather events and the experts' warnings, have led insurance companies to exercise increased caution in writing new policies in coastal areas and to apply stricter standards to the type and condition of homes they would insure. In 2007, Allstate New Jersey Insurance Company, the second largest insurance company in the State, stopped writing new homeowners insurance in the State. In response to the OLS discussion points in the FY2008 budget analysis, the department indicated that its "coastal report" suggested that 89 of the 98 companies offering homeowners insurance, have policies on the coast.

Generally, it is reported to be increasingly difficult for homeowners in coastal areas of the State to find coverage in the voluntary market as insurers are reexamining their exposure, and more homeowners are turning to more expensive coverage available in the surplus lines market or less comprehensive coverage offered through the NJ Fair Access to Insurance Requirements (FAIR) Plan.

- **Question:** a. Please indicate how many insurers are currently offering homeowner insurance policies: (1) in the State; and (2) in coastal areas of the State. Please define the coastal area.

**Response:** (a) There are currently 80 companies that have written exposures throughout the state. Of these 80, there are five companies that have specifically advised the Department that they are no longer writing business in the coastal areas of the state. In the absence of such specific information (or the filing of a plan for block non-renewal or withdrawal), the Department does not routinely receive data about who is writing in various areas of the State.

Coastal Areas have, until recently, been defined as the 92 zip codes specified in the Windmap regulation NJAC 11:2-41. These 92 zip codes are all along the New Jersey coastline and can extend up to 5 miles inland for some zip codes.

In 2006, we began approving filings that expanded the windmap coastal regulations to extend the 92 zip code areas further inland to include up to 190 zip codes for some companies. This was done in part as a response to the Hurricane events in 2004 and 2005 in the southeastern United States including Hurricanes Katrina and Wilma. These events prompted Hurricane Modelers and Meteorologists (along with Global Environmentalists with dire predictions of Global Warming) to predict stronger and more frequent Hurricanes in the Southern Atlantic ocean as average ocean temperatures continue to rise over the next decade because of global warming. Additionally, the Zip Codes in the windmap Regulation were out of date and needed revisions because demographic changes in some of these Zip Codes with newly constructed housing developments and increasing population densities have forced the U.S. Postal Service to revise or split Zip Codes.

**Discussion Points (Cont'd)**

b. Please provide for the coastal area and for the State as a whole, for the years, 1995 through the latest year available: (a) the total number of homeowner policies written; (b) the total number of these policies that are written by admitted insurers in the conventional market; (c) the total number of these policies that are written by insurers in the surplus lines market; (d) the total number of these policies that are written through the Windstorm Market Assistance Program (WINDMAP); and, (e) the total number of policies that are written under the FAIR Plan.

**Response:** We do not have the total number of policies that are written by insurers in the surplus lines market; or the total number of policies that were written through the Windstorm Market Assistance Program (WINDMAP). Please note that the Windstorm Market Assistance Program is no longer in existence. See the spread sheet on the next page for the other requested information.

## Discussion Points (Cont'd)

## Homeowners Exposures

	Voluntary Market		FAIR Plan		Total * Market	Total Coastal
	Total *	Coast	Total *	Coast		
1995	2,131,404	360,367			2,131,404	360,367
1996					0	0
1997	2,224,732	373,926			2,224,732	373,926
1998	2,254,690	377,924	74,731	21,030	2,329,421	398,954
1999	2,234,606	377,652	63,983	19,291	2,298,589	396,943
2000	2,297,123	385,862	59,587	16,616	2,356,710	402,478
2001	2,369,907	404,308	54,273	14,585	2,424,180	418,893
2002	2,327,666	388,702	51,947	13,489	2,379,613	402,191
2003	2,342,844	391,586	51,810	12,799	2,394,654	404,385
2004	2,369,916	397,900	50,676	12,086	2,420,592	409,986
2005	2,373,275	397,766	45,899	10,836	2,419,174	408,602
2006	2,406,187	399,048	40,172	9,709	2,446,359	408,757
2007	2,415,253	394,152	30,558	6,453	2,445,811	400,605

\* Includes Coastal exposures