



August 2003

NEWSLETTER

Money rates for end of month August, 2003 as reported in the Wall Street Journal

Prime	4.00%
6 month Libor	1.200%

Federal Reserve Statistical release H.15 for August 15, 2003 (For Section 32 purpose)

Treasury Securities	
5 Yr.	3.420%
10 Yr.	4.550%
15 Yr.	4.550%
20+ Yrs.	5.490%

*Note: all rates are for reference only; you may check the actual rates at: <http://www.federalreserve.gov/releases/h15/>

ICC NEWS

ICC is currently exploring options that would allow its users to package additional non-ICC documents with its closing mortgage loan document sets and deliver them via ICC's usual e-mail and secure web pickup methods. Customers interested in this expanded capability should call Lori at our toll-free number (888) 437-3627. This is yet another way that ICC is being more responsive to your customized needs.

NEWS OF NOTE

CALIFORNIA PASSES TOUGHEST STATE PRIVACY ACT WHILE INDUSTRY PRAYS FOR FEDERAL PREEMPTION

Governor Gray Davis has just signed California's tough new privacy bill known as SB-1. Acting in response to a threat of a popular referendum to create even stronger privacy legislation, spearheaded by Chris Larsen, CEO of E-Loan, the bill's financial industry opponents allowed the bill to be passed in its current form. Most financial industry trade groups are hoping that some form of Federal preemption may soften some of the "opt-in" provisions to which they were adamantly opposed.

According to a summary prepared by Pratt's Letter (<http://www.prattletter.com>), a highly respected newsletter survey of financial and legislative information, the new legislation would:

- *"Require a consumer's prior approval for sharing personal financial data with an outside company (opt-in, where federal law now provides for giving consumers the right to opt-out).*
- *Give consumers the opportunity to block sharing of personal financial data with affiliated companies or with unaffiliated companies with which the consumer's bank has a joint marketing arrangement (opt-out, where federal law now provides no option at all).*
- *Require a simple, clear, readable form disclosing the consumer's rights and enabling him or her to easily understand and select among options. (Federal law has given rise to what most agree are incomprehensible forms that allow institutions to hide privacy rights if they so choose.) Unlike federal law, the state measure would allow banks that do not share information with others to omit consumer privacy disclosures altogether.*
- *Exempt the sharing of information necessary to complete transactions (as in cases where small banks use outside contractors to provide some products or services).*
- *Bar institutions from denying services to consumers because they refused to allow information sharing. (Incentives to encourage allowing information sharing would be OK.)*
- *Allow information sharing among affiliated institutions in the same line of business and under similar supervision (for example, information may be shared among affiliated banks, but not between a bank and its affiliated insurance company). "*

Other provisions provide for the release of nonpublic personal information in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that the bill would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

The bill also provides for various civil penalties for negligent, or knowing and willful violations of the bill's

provisions. Scheduled to become effective on July 1, 2004, the bill can be accessed at:

http://info.sen.ca.gov/pub/bill/sen/sb_0001-0050/sb_1_bill_20030819_enrolled.html

Another thing worrying the financial community about SB-1 is that powerful Congressional ranking members like Jim Shelby (R-AL) and Paul Sarbanes (D-MD) might adopt some of SB-1's provisions in the next versions of their legislation.

BROKERS BREATH SIGH OF RELIEF AS FCC POSTPONES DO-NOT-FAX RULES

The Federal Communications Commission (FCC) has postponed its "DO NOT FAX" rule, originally scheduled for implementation on August 25th for 16 months. The FCC agreed to extend the effective date of its rules requiring written consent before sending advertising faxes to January 1, 2005 based on numerous petitions from industry trade groups including the MBAA (Mortgage Bankers Association of America), NAR (National Association of Realtors), NAMB (National Association of Mortgage Brokers), ABA (American Bankers Association) and many other individual industry representatives.

Many trade associations were also worried that they could not even contact their membership base if their fax included any offer of products or services for sale. Unless permanent changes are made to this rule, lenders, brokers and others will need written permission from the recipient (including signature) before faxing any communication, which contains what may be described as advertisements.

MORTGAGE COMPANIES HELD HOSTAGE BY LAWYERS AS STATES DEBATE WHO CAN DRAW DOCS, OBTAIN SIGNATURES AND PERFORM CLOSING ACTIVITIES – EVERYBODY SHOULD BE REGULATED!

While states are seeking to regulate all aspects of the real estate process in order to reduce fraud and increase state revenues from licensing and registration fees, attorneys are seeking to expand their monopoly powers by declaring that any non-lawyer who prepares so-called legal documents, including real estate papers, or engages in real estate settlement activities is practicing law without a license and should be barred from engaging in those activities.

- Recent Texas Bar Association opinions that any person who engages in filling out documents or performs closing services is practicing law and therefore must be an attorney.

- In another recent opinion, the Kentucky Supreme Court vacated Kentucky Bar Association Opinion U-58, which claimed that real estate closings constituted the practice of law.
- The State of Illinois Department of Financial Institutions has sent a letter that warned title agents not to use signing services, which were not properly licensed as "certified independent escrowees." This has left title companies rushing to lawyer networks in order to facilitate closings.
- June 24th ruling by Michigan Supreme Court that a lender could charge fees for the completion of standard mortgage documents without being in danger of being charged with practicing law without a license. This worries those engaged in "commercial" real estate document preparation where each document set is specifically crafted to meet the needs of a unique property situation. This is one area that should mandate review by a qualified real estate attorney due to the one-off nature of the document set.

CALIFORNIA UPDATE: WHO IS BEST FOR THE STATE AND THE MORTGAGE INDUSTRY?

The historic gubernatorial recall effort has been certified and there is a long list of potential candidates including political hacks as well as strippers, comedians, actors and others seeking to replace Governor Gray Davis if he should be recalled. The question remains: who is best for California and the mortgage industry? Leading the pack is Lieutenant Governor Cruz Bustamante who appears to be a tax-and-spend, business-as-usual, Davis-clone who may believe that Southern California should be a suburb of Mexico. Next comes Arnold Schwarzenegger, a self-described fiscal conservative and social liberal who believes he can assemble a dream team of advisors to lead the state out of financial chaos. Next on the list is long-shot Tom McClintock, a conservative professional politician with an actual plan to immediately embark on returning California to prosperity. As for the numerous others, you have a better chance at winning the lottery jackpot than any other candidate has of winning this race. **The only sure thing is that all Californians must put politics aside and vote as if both their personal and professional life depended upon a successful choice: because, at this point in history, it really does.**

COMPLIANCE NOTES

FANNIE MAE ANNOUNCEMENT CONTAINS LIST OF STATES WITH "HIGH COST LOANS" THAT FANNIE WILL NOT PURCHASE...PLUS FORMATTING REQUIREMENTS.

Fannie Mae Announcement 03-07 contains information on a number of current issues including the reformatting of security instruments and borrower signatures on both security instruments and notes. It is a must read and can be found at

<http://www.efanniemae.com/singlefamily/pdf/03-07REV1.pdf>

Effective Date: Immediate OCC CHANGES ADVERSE ACTION ADDRESS AND POSTER ADDRESS

Lenders who use adverse action notices as required under ECOA (Equal Credit Opportunity Act) and use Equal Housing Lender posters should change the OCC's address to: Comptroller of the Currency Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. The telephone number remains the same. Further information can be found in OCC Bulletin 2003-33 located at

<http://www.occ.treas.gov/ftp/bulletin/2003-33.txt>

Effective Date: October 1, 2003 TELEMARKETERS BANNED FROM CALLING NUMBERS REGISTERED BY AUGUST 31

A reminder that there are approximately 30-million consumers who have signed up with the FTC's Do-Not-Call Registry since it was launched. The FTC projects that as many as 60-million telephone numbers will be registered by the one-year anniversary of the project on June, 2004. Since fines are heavy and some modifications to the rules may be made prior to October 1st, consult the FTC for further information. This is one area, which may be overlooked by the smaller mortgage brokers as they do not routinely consider themselves to be telemarketers. Unfortunately, there is little provision for business size other than some fee reductions for reduced list access.

Specific information about accessing telephone numbers and downloading files from the national registry is available at

<http://www.ftc.gov/opa/2003/08/tmkraccessinfo.htm> Additional information will be provided on the telemarketer Web site, www.telemarketing.donotcall.gov. Copies of the Federal Register notice, as well as related information for consumers and businesses, are available from the FTC's Web site at <http://www.ftc.gov> and also from the

FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580

Effective Date: January 1, 2004 UPDATED TILA TRIGGERS POSTED

On August 19th, the Federal Reserve Board released their annual adjustment of the TILA Disclosure Trigger Amounts based on the annual percentage change reflected in the Consumer Price Index that was in effect on June 1, 2003.

"Effective January 1, 2004, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of \$499 or 8 percent of the total loan amount."

The Home Ownership and Equity Protection Act of 1994 bars credit terms such as balloon payments and requires additional disclosures when total points and fees payable by the consumer exceed the fee-based trigger (initially set at \$400 and adjusted annually) or 8 percent of the total loan amount, whichever is larger. The notice can be found at:

<http://www.federalreserve.gov/BoardDocs/Press/bcreg/2003/20030819/default.htm>

Effective Date: unknown CITY OF CLEVELAND HEIGHTS, OHIO PASSES PREDATORY LENDING BILL

In spite of an Ohio State law that forbids municipalities from enforcing prohibitions against predatory loans within their jurisdictional boundaries, the City of Cleveland Heights, Ohio recently passed Ordinance No. 72-2003, aimed at prohibiting predatory lending practices. It is unclear whether or not this ordinance can be enforced.

OTHER NEWS OF NOTE

SEVENTH CIRCUIT RETURNS AGAIN TO RESPA ISSUES

The United State Court of Appeals for the Seventh District Circuit has recently ruled that some consumers may have a legitimate claim against a mortgage company where the mortgage company and the title company both charged separate fees for recording the mortgage release.

This is the same court that acknowledges, in a previous case, that while RESPA prohibits taking a "portion" of a fee without rendering a service, RESPA does not address the position of someone taking a whole fee without providing any service. The court has also reminded HUD on

various occasions that RESPA is not a price control mechanism and that there is no prohibition against reasonable fee markups. The case can be found at <http://www.ca7.uscourts.gov/op3.fwx?submit1=showop&caseno=02-2801.PDF>

HUD, INDUSTRY AND CONSUMERS CONTINUE TO CLASH OVER RESPA PACKAGING

While awaiting HUD's next move to reform RESPA, the industry and concerned consumer groups continue to offer public advice on "what the industry wants?" As if 40,000 responses are not enough, HUD faces Congressional inquiries and press scrutiny.

RESPRO (Real Estate Servicers Providers Council) is still looking to a fall release (most likely October) of the revised RESPA (Real Estate Settlement Procedures Act) rule that was to be approved in September.

The New York Times editorial on August 23rd supported Secretary Mel Martinez's one package proposal; while the Wall Street Journal thinks that revising the proposed legislation to accommodate a two-package approach may send the entire process back to the drawing board. The National Association of Realtors is supporting a two-package approach while opposing any proposal, which would allow a single packager to bundle all mortgage and settlement services into a guaranteed mortgage package

Meanwhile Consumer Groups such as ACORN, the Consumers Union, the National Community Reinvestment Coalition, the U.S. Public Interest Research Groups, the Consumer Federation of America, the National Association of Consumer Advocates, and the National Consumers Law Center continue to oppose the "dual packaging" concept and argue that it not only will not simplify the settlement process, but will add to the confusion and cost to the consumer. While everybody is supportive of the Secretary's efforts, very few agree with the path that he should follow. The only conclusion to be drawn is that one must wait and see what is published and then mount a legal challenge in the courts.

OCC PROPOSES RULE CLARIFYING PREEMPTION OF STATE LAW

"The OCC is issuing a notice of proposed rulemaking that would amend parts 7 and 34 of its regulations to add provisions clarifying the applicability of state law to national banks. These provisions would identify the types of state laws that are preempted as well as the type of state laws that generally are not preempted, in the context of national bank lending, deposit-taking and other operations." As with other notices of proposed rulemaking, there will be a sixty (60) day comment period from the Page 4 of 6

time the official notice is published in the Federal Register. The purpose of this rule is to clarify the many issues of overlapping jurisdictions and the legal uncertainty that comes from relying on Federal rather than state regulation. The notice, in question-and-answer format, may be found at:

<http://www.occ.treas.gov/nprqas.pdf>

HUD CONTINUES TO ENFORCE RESPA ANTI-KICKBACK PROVISIONS

In accordance with HUD's long-held belief that a real estate agent may not be compensated for simply filling out a loan application, HUD fined World Savings Bank in Oakland, California for allegedly paying real estate agents a \$100 fee for filling out and submitting an online mortgage loan application for prospective borrowers. HUD maintains such actions may be considered to be referral fees and would violate RESPA's anti-kickback provisions. HUD Assistant Secretary John Weicher commented, "Business practices that are intended to skirt the anti-kickback provisions of RESPA will not be tolerated." How this will impact some of the newly-formed lender/real estate agent joint ventures is unclear.

TECHNOLOGY

VIRUSES and WORMS AFFECTING LOAN ORIGINATORS

With the latest round of viruses (technically worms) to hit the industry, one can only urge everyone to use a firewall, install a good anti-virus program, and keep current on all manufacturer program patches and updates. Never open e-mails containing unknown attachments and wherever and whenever possible, avoid downloading non-business related programs and pictures from unknown sites.

Although ICC's main operating system is not vulnerable to Microsoft Windows style viruses, we maintain many safeguards to protect our company against all manner of threats. Many of our valued customers have unknowingly sent us virus-infected e-mail which was immediately detected and destroyed upon arrival. As is our practice, we immediately notify the sender and offer our assistance in resolving any communications-related issues. In some cases, ICC responded by faxing documents to infected sites while computers were cleaned. Please feel free to call upon ICC if you feel that your systems may be compromised.

PRIVACY & SECURITY

REGULATORS CONTINUE TO REFINE PRIVACY ACT INTERPRETATIONS AND GUIDELINES

The Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS), have published a notice and request for comment in the August 12th Federal Register.

The document entitled, "Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice," is seeking public comment regarding further interpretation of the privacy provisions of the Gramm-Leach-Bliley Act prior to October 14, 2003.

The document further describes the combined agencies' expectations when requiring financial institutions to develop a response program to protect against and address reasonably foreseeable risks associated with internal and external threats to the security of customer information by the institution and/or its service providers. The request for comment can be found at:

<http://www.occ.treas.gov/fr/fedregister/68fr47954.pdf>

Some of these guidelines, if adopted, may parallel California's recently enacted security breach notification procedures to alert consumers to potential and actual security breaches where there was a possibility that "nonpublic personal information" would be or was released, and which were codified in California Senate Bill 1386. Since "public trust" is a major component of all financial transactions, it is important that the industry adequately deal with this matter in an appropriate manner which will preserve the responsible reputation of parties which may have been attacked by disgruntled employees, criminals or recreational hackers.

E-MAIL SLIP MAKES COMPANY AN FTC ENFORCEMENT TARGET

A previous newsletter noted that a prominent real estate attorney inadvertently revealed his entire contact list by failing to insure that he placed the distribution list in the bcc (blind carbon copy) field and instead placed the list in the cc (carbon copy) field, thus revealing the entire list to each e-mail recipient.

On June 24th an employee of a prominent drug company made the same basic error and exposed his employer to the first FTC sanctions for an e-mail security breach. While the FTC is not going to sanction each and every breach of security, it did prosecute this particular case

because the breach disclosed personal information provided to the company by consumers in connection with the company's web site contrary to the company's own privacy notice which appeared on the site. The FTC's stated goal in pursuing this action was to insure that any promise of privacy is actually upheld. It is also to be noted that there is no company defense by pointing to a simple employee error. The company remains responsible for the actions of its employees.

DEFAULT PASSWORDS LEAD TO SECURITY BREACHES

ICC recommends that all computer users change the default passwords used on new hardware and software installations. In many cases, users are unaware of the default passwords which may simply be published in the vendor's handbooks to ease installation problems. Another reminder, do not use simple passwords such as "password" or "mycomputer" as many hackers maintain a list of commonly used passwords to assist in their surreptitious system entry.

LAWYERS EYING PRIVACY BREACHES AND NATURAL DISASTERS AS THE NEXT CLASS ACTION ARENA

Using the published security and safety guidelines that have been recently issued, some attorneys are considering the possibility of using the legal theory of "negligent failure to plan" as the potential for creating the next multi-million dollar legal fee scam.

Unless Congress (made up of numerous attorneys) enacts tort reform, we can see that disaster planning, security provisions and the normal act of business continuity planning turning into a major legal burden. This is an area in which the expenses of protection may easily outweigh the costs of product and service promotion.

CONNECTIONS

LAWYERS MAY BE EXEMPT FROM THE ATTORNEY-CLIENT PRIVILEGE IF ACTING AS A WHISTLEBLOWER

On Monday, August 11th, by a 218-201 vote, the American Bar Association's policy group amended its ethics code to allow, but not require, lawyers to breach the attorney-client privilege, without fear of sanction, if an attorney believes that by doing so, they would be stopping their client from committing a financial crime or fraud. This is the result of scared lawyers overturning 200-years of client-attorney protection to protect their own turf. What little trust clients had in attorneys was fading fast. **With this new policy, the trust is gone!**

INTERESTING LINKS

Courtesy of the Federal Reserve Board... A Senior Loan Officer Opinion Survey on Bank Lending Practices can be found by clicking on the links below. (Note: the files are in PDF format, which requires Adobe's Acrobat Reader)

The August 2003 Senior Loan Officer Opinion Survey on Bank Lending Practices addressed changes in the supply of, and demand for, bank loans to businesses and households over the past three months. One section, "Lending to Households," contained in Table 1, questions 12-19 may be of particular interest to mortgage originators. The links can be found at:

<http://www.federalreserve.gov/boarddocs/snloansurvey/200308/default.htm>

Charts ([12.9 KB PDF](#))

Measures of lending practices from current and previous surveys

Table 1 ([22.5 KB PDF](#))

Summary of responses from U.S. banks

Table 2 ([13.5 KB PDF](#))

Summary of responses from branches and agencies of foreign banks

Full report ([53.6 KB PDF](#))

At ICC, we appreciate and value your business. Feel free to call us toll-free at (888) 437-3627 or e-mail me at mike@iccdocs.com with your suggestions – Mike Straziuso, President

For those who would like to receive our informative newsletter automatically each month, please contact Erin at <mailto:erinh@iccdocs.com> to be added to the list.

Bowing to pressure from the regulators (notably the SEC) who has promised to restrict the ABA's self-policing policy in favor of governmental oversight and examination, this single act opens both the legal and financial communities to more fear, uncertainty and doubt. Who knows if an individual attorney can comprehend complex financial situations? Who is responsible for advice received from multiple attorneys? What if an attorney costs their employer megabucks to defend against a false charge? Who will pay for the rise in malpractice insurance rates? Can stockholders and other interested parties sue a lawyer who didn't act? Or who acted too hastily? First the IRS compels the large accountancy firms to reveal suspected tax shelter information, and now other regulators are trying to turn attorneys into stool pigeons. *Perhaps it may be wise to replace your corporate attorney and retain a criminal attorney while treating every corporate action as a potential crime.*

LENDERS ARE GETTING CLOSER TO THE POINT-OF-SALE TO AVOID DISINTERMEDIATION

RE/MAX International has chosen the Bank of America as their "exclusive preferred mortgage lender" and Countrywide Home Loans and Star Real Estate has announced the formation of a joint venture operation named Terra Mortgage. We are finding more and more strategic partnerships with mortgage lenders seeking to co-opt the real estate sales agent's face-to-face position with both buyers and sellers to be first-in-line to offer financing options along with the real estate. Also to counter the projected downturn in the mortgage marketplace while insuring that they will not become irrelevant as technology further compresses the selling and financing functions. Sales agents unable to offer quick and easy financing and financial firms unable to connect quickly with potential customers will be left behind.

DOES THE STATE OR MUNICIPALITY OWN REAL ESTATE DATA?

As more and more states outsource real estate information operations to title companies and other data processing vendors, the question of who actually owns the data is becoming a major issue. The prevalent use of outsourcers to warehouse public records leaves some private firms asserting that the information is no longer public when it is under their supervision. In exchange for easy money, all manner of government agencies are looking at outsourcing. What must become a primary matter of concern in the future is how to retain the publics free and unfettered access to the data that they are compelled to provide.