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ICC NEWS

NEWS OF NOTE

ICC WARNING: BACKUP/REDUNDANCY

ICC strongly suggests that you take the time to consider your backup and redundancy plans for the coming year. A recent e-mail from one of the smaller ISPs (Internet Service Providers) makes the point abundantly clear.

“The incoming mail server failed earlier today. The power supply has to be replaced but none of the right type will be available till late next week. In the meantime we have jury rigged another unit to get the server back on line. No mail has been lost, but there will be some delays on incoming mail as the volume being received is quite high. In addition sometime next week we will need to bring the server back down to install the correct power supply.”

Not a pretty picture to contemplate. Therefore, we would like to remind our valued clients that your loan document sets, which are normally sent via user-directed encrypted e-mail, can be picked up via web access using our industrial strength encrypted Web Pick Up link. Your documents can be accessed from any computer with a browser and the capability to open and print PDF (Portable Document Format) documents. Like we are fond of saying: ICC provides the documents you want, where you want, when you want – and at a price you can afford. For more information on using ICC’s Web Pick-Up option, contact customer service toll-free at (888) 437-3627 or send an e-mail to [info@iccdocs.com](mailto:info@iccdocs.com).

ICC – WINDOWS 7 COMPATIBILITY TESTS

Pending the final test with the release copy of Windows 7, ICC is compatible with the Windows 7 Operating System which is said to be scheduled for release possibly in September or October. As with anything Microsoft, the schedule date is subject to revision. Our testing reveals that Windows 7 is more like Windows Vista Second Edition rather than an entirely new operating system. The hardware requirements for Windows 7 are the same as for Windows Vista, so those upgrading from Windows XP or older hardware may experience some difficulty. ICC’s tests included the latest version of the Internet Explorer Browser and all appears to be well – even considering that this Browser is more oriented to web standards and is less tolerant of hacks and work-arounds.

***We count on your referrals -- please don't keep us a secret from friends and associates who could benefit from our services!***

IN PLAY: WHAT IS GOING ON?

- ***The President comes clean ...*** In an uncharacteristic moment of clarity, President Obama, in his first nationally televised press conference, responded to a question asked by Bloomberg News reporter Juliana Goldman.

“Many experts from Nouriel Roubini to Senator Schumer have said that it would cost the government more than a trillion dollars to really fix the financial system. During the campaign, you promised the American people that you won’t just tell them what they want to hear, but what they need to hear. ***Won't the government need far more than \$350 billion remaining in the financial rescue fund to really solve the credit crisis?***”

Obama’s answer revealed the fact that the government really doesn’t know how to solve the problems at hand and what they will cost.

“Well, ***the credit crisis is real, and it's not over. We averted catastrophe*** by passing the TARP legislation. But, as I said before, because of a ***lack of clarity and consistency in how it was applied, a lack of oversight in -- in how the money went out, we didn't get as big of a bang for the buck as we should have.***”

“My ***immediate task is making sure that the second half of that money, \$350 billion, is spent properly.*** That’s my first job. Before I even think about what else I’ve got to do, my first task is to make sure that my secretary of the treasury, Tim Geithner, working with Larry Summers, my national economic adviser, and others are coming up with the best possible plan to use this money wisely in a way that’s transparent, in a way that provides clear oversight, that ***we are conditioning any money that we give to banks on them reducing executive compensation to reasonable levels and to make sure that they're not wasting that money.***”

“We are going to have to work with the banks in an ***effective way to clean up their balance sheets so that some trust is restored within the marketplace,*** be-

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Money rates for end of month February 2009 as reported in the Wall Street Journal

Prime	3.25000%
6 month Libor	1.80313%

Federal Reserve Statistical release H.15 for February 13, 2009 (For Section 32 purpose)

Treasury Securities

5 Yr.	1.880%
7 Yr.	2.290%
10 Yr.	2.890%
15 Yr.	2.890%
20 Yr	3.910%
30 Yr	3.680%

**\*Note:** all rates are for reference only; you may check the actual rates at:

[www.federalreserve.gov/releases/h15/](http://www.federalreserve.gov/releases/h15/)

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cause right now part of the problem is that *nobody really knows what's on the bank's books*. Any given bank, they're not sure what kinds of losses are there. We've got to open things up and restore some trust."

"We also have to deal with the housing issue in a clear and consistent way."

"I don't want to preempt my secretary of the treasury. He's going to be laying out these principles in great detail tomorrow."

"But my instruction to him has been: Let's get this right. Let's create a template in which we're restoring market confidence."

"And the reason that's so important is because *we don't know yet whether we're going to need additional money or how much additional money we'll need until we've seen how successful we are at restoring a sense of confidence in the marketplace* that the federal government and the Federal Reserve Bank and the FDIC, working in concert, know what they're doing."

"That can make a big difference in terms of whether or not we attract private capital back into the marketplace. And *ultimately the government cannot substitute for all the private capital that has been withdrawn from the system. We've got to restore confidence so that private capital goes back in.*"

Bottom line: how can you trust a government that can't accurately count votes or account for monies spent in government programs to responsibly oversee trillions of dollars?

- **Whither RESPA? ...** The Obama Administration is continuing to support the proposed RESPA (Real Estate Settlements Procedures Act) final rule by urging the United States District Court to dismiss the NAMB (National Association of Mortgage Brokers) challenge which claims that the final rule is one-sided and favors mortgage bankers over mortgage brokers. Of course, the major issue remains the disclosure of the YSP (Yield Spread Premium) as a borrower credit when no such disclosure requirement is necessary for a mortgage banker. Significant industry opposition to the rule still exists and many are urging HUD to reconsider its position regarding the rule's issuance.
- **Mortgage Deductibility: Obama's leftist policies are coming home to roost ...** For many of those who have supported President Obama's rather leftist agenda based on well-established democrat party principles of "tax the rich," it comes as a surprise that

President Obama is not only seeking to reduce the deduction of charitable contributions by those making \$250,000 or more, but also want to phase out the deduction for mortgage-related items including interest, insurance and real estate taxes. The Mortgage Bankers Association is dead set against the policy and claims that such a cap on the deductibility of real estate-related costs would have an adverse impact on a market that is already in severe trouble.

- **Stress tests ...** No not the medical tests on beleaguered mortgage executives, but the mathematical models used to determine a bank's capital sufficiency should the economy continue to deteriorate. It is believed that the results of these tests, which will not be available to the public less they cause a dislocation of assets (aka "bank run") will isolate those institutions which will require further regulatory scrutiny, oversight monitoring and, of course, massive federal assistance.

TARP re-branded? Former Treasury Secretary Hank Paulson openly admitted that the first round of TARP (Troubled Assets Relief Program) added very little liquidity to the loan marketplace and were instead used for acquiring other financial institutions and/or shoring up institutional balance sheets. Now Obama's Treasury Secretary, Timothy Geithner, has apparently re-branded the TARP program; which will now be part of the Treasury Department's Financial Stability Plan (FSP). As part of the FSP, the Capital Assistance Program (CAP) will allow those financial institutions with problematical stress test results to seek a private funds infusion to meet mandated capital sufficiency requirements, after which they can apply for additional government funding under the CAP program. This is being sold to the public as a bridge between private and government capitalization and as a method to reduce the amount of time the government is required to hold the affected (or should I say afflicted) banks shares. For those wanting more information on the FSP, CAP or stress tests, they can be found at: <http://www.financialstability.gov>.

- **Are the evil speculators now being allowed to participate in the bailout? ...** Widely excoriated as being partially responsible for the increasing foreclosure rate, speculators who built multiple property pyramids based on interlocking assets might be seeing some relief as Fannie Mae continues to loosen their lending requirements. Perhaps providing funding and/or guarantees to borrowers who have mortgaged up to nine properties. In considering this type of financing, Fannie Mae executives are said to be targeting "experienced" investors whose cash flow and equity problems are solvable over time in order to mitigate foreclosures. Normally, the marketplace would demand that the properties be re-priced at market levels and

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sold to willing buyers – with the investor booking the loss. Therefore, it is curious that Fannie Mae would assist this group of distressed borrowers unless it was at the government's urging.

- **Is there an assault on mortgage brokers?**

... The PMI Group has advised third-party originators that it will no longer insure their mortgages unless these originators use a warehouse line of credit to fund the loans. Some in the industry wonder if this is part of a continuing assault on mortgage brokers who are being blamed as the primary source of the bad loans that are said to be responsible for the current financial crisis. The National Association of Mortgage Brokers (NAMB) believes that there might be a well-orchestrated plan by mortgage bankers to drive the mortgage brokers out of business in order to retain origination profits and gain market share.

This is curious as the Mortgage Bankers Association (MBA) is seeking a meeting with the Treasury Department to ask them to consider offering federal guarantees on the bank-issued warehouse lines of credit used to fund third-party origination efforts. It is believed that the bankers want to isolate their exposure to a large third-party originator going bankrupt and leaving the bank holding the bag. This might be the very type of lending which invokes a "moral hazard" which allows the banks to provide funds to shaky originators at little or no risk to themselves. Better these originators collapse and the originations fall to more well-financed and well-positioned lenders and brokers.

- **Pumping more money into Fannie and Freddie ...**

The Treasury Department apparently has doubled the original \$100 billion funding promised to Fannie Mae and Freddie Mac in order to keep them afloat and to reassure counterparties that the GSE's paper is backed by the full faith and credit of the United States. It is likely that these funds will be used to cover large fourth-quarter losses so that the GSE can maintain a positive net worth on their balance sheets. Also of concern, is that the Treasury Department is increasing their portfolio limits by another \$50 billion dollars to keep the shell game going at a time when the GSEs should be reducing their portfolios to reduce the government's systemic risk exposure. Curiously enough, Fannie and Freddie continue to be listed on the New York Stock Exchange although their shares trade for about fifty-cents, less than the dollar minimum required to maintain their listing. One wonders if this is happening only to allow banks which hold Fannie Mae and Freddie Mac securities to avoid a further loss by valuing their stock holdings at zero.

- **What does the treasury mean by that? ...**

There is no doubt that confusion reigns supreme both in the Treasury Department which is offering funds to the banking industry and in the designated recipient banks. In many cases the Treasury Funds, under TARP (Troubled Assets Relief Program) were bailout funds designed to give the bank breathing room to work out its problems and provide some measure of interim liquidity which could result in loans being offered to consumer and commercial borrowers. Now, with the Treasury's Capital Purchase Program (CPP), also designed as a form of liquidity injection, the situation becomes murkier. Banks that were urged (forcibly?) to accept these funds are now starting to see that the provisions that are being applied to troubled banks are now being applied to those who are well run and did not really need the capital.

According to one bank, MidSouth Bank: "We thought by accepting the capital, which is money we have to pay back with interest, we were embarking on a plan that would give us even more money to deploy in our communities at a time when the economy needs some new life," said MidSouth Bank President and CEO Rusty Cloutier. 'It was sold to us by the feds as a partnership, but it's turning out to be something very different. It's looking more and more like the federal government wants to treat this like it was a needs-based issue, and we didn't need the money.'"

"Cloutier said community banks like his are now confused by the mixed signals the Treasury Department is sending out, attempting to put the same sweeping restrictions on healthy banks as the failing banks that received the original TARP money. 'They're talking about attaching all sorts of strings to the money, so banks have been sending it back,' he added. 'The Treasury needs to stop listening to the special interests of the 'too big to fail' banks that got us into this trouble and break them up. And at the same time it should back away from community banks and let us do what we're supposed to do with the TARP funds -- lend the money.'"

Perhaps the real plan is for the Treasury and the Federal Reserve to so confuse the public that they are unable to distinguish between "good banks" and "bad banks" and thus provide some measure of cover to banks like Citibank, Bank of America and others who have significant problems with their government-forced acquisitions. Or to disguise the total amount of money flowing into the system to bailout the bad actors in the financial industry. In any event, among a constantly shifting pattern of regulatory reform and the requirements of regulatory agencies vying for supremacy, the actual provision and use of government-supplied funding and the conditions under which it is being supplied is growing murkier by the day.

## THE FEDERAL RESERVE

### *The FOMC (Federal Open Market Committee) Meeting Minutes for January 27/28 meeting ...*

There is nothing new in the minutes of the FOMC meeting that has not already been disseminated widely in the financial press. However, I would caution readers to carefully review any "official" pronouncements coming from the Government or the Federal Reserve as they might be tainted by political expediency and the need to artificially boost consumer confidence levels. One example of a selective interpretation of the facts involves inflation. It is hard to believe that the Federal Reserve and the Treasury Department can continue to pump prodigious billions of dollars into our financial system without a plan to deal with the rampant inflation that this might produce. It is wise to remember that the classic definition of the inflation is "too much money chasing too few goods," or in this particular instance, too much capital chasing too few investments with decent yields. While our ICC Fed Watcher system is showing increasing inflation, we are still investigating the Federal Reserves' claim that: *"Although implied inflation compensation derived from Treasury Inflation-Protected Securities (TIPS) increased over the period, this increase reportedly was largely attributable to improved trading conditions in the TIPS market rather than upward revisions to inflation expectations."* Unfortunately, we cannot currently quantify this claim in order to resume our Fed Watcher chart.

- **The action ...** "The Federal Open Market Committee decided today to keep its target range for the federal funds rate at 0 to 1/4 percent. The Committee continues to anticipate that economic conditions are likely to warrant exceptionally low levels of the federal funds rate for some time."
- **Forward outlook ...** In the forecast prepared for the meeting, the staff revised down its outlook for economic activity in the first half of 2009, as the implications of weaker-than-anticipated economic data releases more than offset an upward revision to the staff's assumption of the amount of forthcoming fiscal stimulus.

The staff's projections of real GDP growth in the second half of 2009 and in 2010 were revised upward slightly, reflecting greater monetary and fiscal stimulus as well as the effects of more moderate oil prices and long-term interest rates, but they continued to show no more than a gradual economic recovery. The staff again expected that unemployment would rise substantially through the beginning of 2010 before edging down over the remainder of that year. Forecasts for core and overall PCE inflation in 2009 and 2010 were little changed, with growth in both core and overall PCE prices expected to be unusually low over the next few years in response to slack in resource utilization and relatively flat prices anticipated for many commodities and for imports.

- **Not a pretty picture ...** "While conditions in some financial markets showed limited improvement, extraordinary financial stresses remained apparent and credit conditions became still tighter for households and businesses. Real consumer spending appeared to decline sharply again in the fourth quarter, likely reflecting the combined effects of decreases in house and equity prices, a weakening labor market, and tight credit conditions."

"Real residential construction contracted in November and December. Single-family housing starts dropped at a much faster rate in those months than they had in the first 10 months of the year. Multifamily starts also fell in those months, as did permit issuance for both categories. Housing demand remained very weak and, although the stock of unsold new single-family homes continued to move down in November, inventories of unsold homes remained elevated relative to the pace of sales. Sales of existing single-family homes dropped less than sales of new homes in November and turned up in December, but the relative strength in sales of existing homes appeared to be at least partly attributable to increases in foreclosure-related and other distressed sales. Although the interest rate on conforming 30-year fixed-rate mortgages declined markedly over the intermeeting period, the Senior Loan Officer Opinion Survey on Bank Lending Practices that was conducted in January indicated that banks had tightened lending standards on prime mortgage loans over the preceding three months. The market for nonconforming loans remained severely impaired. Several indexes indicated that house prices continued to decline rapidly."

- **Happy talk ...** "Conditions in some financial markets have improved, in part reflecting government efforts to provide liquidity and strengthen financial institutions; nevertheless, credit conditions for households and firms remain extremely tight."
- **Weasel words ...** "The Committee anticipates that a gradual recovery in economic activity will begin later this year, but the downside risks to that outlook are significant." "The Federal Reserve will employ all available tools to promote the resumption of sustainable economic growth and to preserve price stability."
- **Future plans include ...** "The focus of the Committee's policy is to support the functioning of financial markets and stimulate the economy through open market operations and other measures that are likely to keep the size of the Federal Reserve's balance sheet at a high level. The Federal Reserve continues to purchase large quantities of agency debt and mortgage-backed securities

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to provide support to the mortgage and housing markets, and it stands ready to expand the quantity of such purchases and the duration of the purchase program as conditions warrant. The Committee also is prepared to purchase longer-term Treasury securities if evolving circumstances indicate that such transactions would be particularly effective in improving conditions in private credit markets. The Federal Reserve will be implementing the Term Asset-Backed Securities Loan Facility to facilitate the extension of credit to households and small businesses. The Committee will continue to monitor carefully the size and composition of the Federal Reserve's balance sheet in light of evolving financial market developments and to assess whether expansions of or modifications to lending facilities would serve to further support credit markets and economic activity and help to preserve price stability."

For those wishing to read the FOMC meeting notes in context, they can be found at <http://www.federalreserve.gov/monetarypolicy/fomcminutes20090128.htm>. To view the associated Summary of Economic Projections, they can be found at <http://www.federalreserve.gov/monetarypolicy/fomcminutes20090128ep.htm>.

#### **Fed and Treasury Operations...**

The Federal Reserve continues to pump prodigious amounts of money into the financial system under its "quantitative easing" policy. Considering the numerous joint projects between the Treasury Department and the Federal Reserve, we feel confident that the money sloshing around the financial system is far from the Congressionally-approved TARP funds and the amounts disclosed by the Federal Reserve. Estimates of this amount range from \$3 TRILLION to \$7 TRILLION dollars.

#### **Other selected Fed, Treasury and FDIC operations include:**

- On January 3rd, the Fed announced that its existing liquidity programs which were scheduled to expire on April 30, 2009 are being extended through October 30, 2009. More information can be found at <http://www.federalreserve.gov/newsevents/press/monetary/20090203a.htm>.
- On February 9th, the Fed made another \$150 BILLION of TAF **28**-day loans at a stop-out rate of 0.25% available to 117 bidders who submitted applications for \$142.448 billion in loans. Uncharacteristically – **not all available funds were disbursed**.
- On February 10<sup>th</sup>, the Federal Reserve Board announced that it is prepared to undertake a substantial expansion of the Term Asset-Backed Securities Loan Facility (TALF). The expansion **could increase the**

**size of the TALF to as much as \$1 trillion and could broaden the eligible collateral to encompass other types of newly issued AAA-rated asset-backed securities, such as commercial mortgage-backed securities, private-label residential mortgage-backed securities, and other asset-backed securities.** An expansion of the TALF would be supported by the provision by the Treasury of additional funds from the Troubled Asset Relief Program. More information is available at <http://www.federalreserve.gov/newsevents/press/monetary/20090210b.htm>.

- On February 23rd, the Fed issued a Joint Statement by the Treasury, FDIC, OCC, OTS, and the Federal Reserve on the Capital Assistance Program. Nothing new here, but those wanting to read the statement can find it at <http://www.federalreserve.gov/newsevents/press/bcreg/20090223a.htm>.
- On February 23rd, the Fed made another \$150 BILLION of TAF **84**-day loans at a stop-out rate of 0.25% available to 96 bidders who submitted applications for \$111.683 billion in loans. Again – **not all available funds were disbursed**.
- On February 25<sup>th</sup>, the Fed announced the implementation of modeled "stress tests" in conjunction with the CAP (Capital Assistance Program). These tests are designed to indicate potential capital reserve weaknesses under various economic scenarios. More information can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/20090225a.htm>.

**Continuing lack of transparency ...** The Federal Reserve, Treasury Department and FDIC are all urging further transparency in funds usage. However, most banks are resisting their efforts saying that the funds have been commingled in a variety of internal accounts and that such reporting would either be impossible or would not provide substantive information for regulatory purposes. Sounds like everybody concerned would like to keep the source, amount and use of federal funding out of the public spotlight.

#### **What the Fed, Treasury and Regulatory Agency members are saying...**

- Chairman Ben S. Bernanke: "**Federal Reserve programs to strengthen credit markets and the economy**" before the Committee on Financial Services, U.S. House of Representatives, Washington, D.C. (February 10, 2009) <http://www.federalreserve.gov/newsevents/testimony/bernanke20090210a.htm>. Curiously, this testimony was billed by the House Financial Services Committee as an "An Examination of the Extraordinary Efforts by the Federal Reserve Bank to Provide Liquidity in the Current Financial Crisis." It is amaz-

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ing how easy these people can be satisfied by a re-hash of old narrative and a laundry list of web sites containing specific Federal Reserve information. A true “dog and pony” show.

- Governor Elizabeth A. Duke: “***Stabilizing the Housing Market: Next Steps***” at the Global Association of Risk Professionals’ Risk Management Convention, New York, New York (February 11, 2009) <http://www.federalreserve.gov/newsevents/speech/duke20090211a.htm>.
- Governor Elizabeth A. Duke: “***Stabilizing the Housing Market: Focus on Communities***” at the American Bankers Association National Conference for Community Bankers, Phoenix, Arizona (February 16, 2009) <http://www.federalreserve.gov/newsevents/speech/duke20090216a.htm>.
- Chairman Ben S. Bernanke: “***Federal Reserve Policies to Ease Credit and Their Implications for the Fed’s Balance Sheet***” at the National Press Club Luncheon, National Press Club, Washington, D.C. (February 18, 2009) <http://www.federalreserve.gov/newsevents/speech/bernanke20090218a.htm>.
- Governor Elizabeth A. Duke: “***CRA: A Framework for the Future***” at the Revisiting the CRA Policy Discussion, Washington, D.C. (February 24, 2009) <http://www.federalreserve.gov/newsevents/speech/duke20090224a.htm>.
- Chairman Ben S. Bernanke: “***Semiannual Monetary Policy Report to the Congress***” before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C. (February 24, 2009) <http://www.federalreserve.gov/newsevents/testimony/bernanke20090224a.htm>. *Chairman Bernanke presented identical remarks before the Committee on Financial Services, U.S. House of Representatives, on February 25, 2009*

“As you are aware, the U.S. economy is undergoing a severe contraction. Employment has fallen steeply since last autumn, and the unemployment rate has moved up to 7.6 percent. The deteriorating job market, considerable losses of equity and housing wealth, and tight lending conditions have weighed down consumer sentiment and spending.”

“The substantial declines in the prices of energy and other commodities last year and the growing margin of economic slack have contributed to a substantial lessening of inflation pressures.”

“The principal cause of the economic slowdown was the collapse of the global credit boom and the ensuing financial crisis, which

has affected asset values, credit conditions, and consumer and business confidence around the world. The immediate trigger of the crisis was the end of housing booms in the United States and other countries and the associated problems in mortgage markets, notably the collapse of the U.S. subprime mortgage market. Conditions in housing and mortgage markets have proved a serious drag on the broader economy both directly, through their impact on residential construction and related industries and on household wealth, and indirectly, through the effects of rising mortgage delinquencies on the health of financial institutions. Recent data show that residential construction and sales continue to be very weak, house prices continue to fall, and foreclosure starts remain at very high levels.”

“The financial crisis intensified significantly in September and October. In September, the Treasury and the Federal Housing Finance Agency placed the government-sponsored enterprises, Fannie Mae and Freddie Mac, into conservatorship, and Lehman Brothers Holdings filed for bankruptcy. In the following weeks, several other large financial institutions failed, came to the brink of failure, or were acquired by competitors under distressed circumstances.”

“At the time of our last Monetary Policy Report, the Federal Reserve was confronted with both high inflation and rising unemployment. Since that report, however, *inflation pressures have receded dramatically while the rise in the unemployment rate has accelerated and financial conditions have deteriorated*. In light of these developments, the Federal Reserve is committed to using all available tools to stimulate economic activity and to improve financial market functioning. Toward that end, *we have reduced the target for the federal funds rate close to zero and we have established a number of programs to increase the flow of credit to key sectors of the economy*. We believe that these actions, combined with the broad range of other fiscal and financial measures being put in place, will contribute to a gradual resumption of economic growth and improvement in labor market conditions in a context of low inflation. We will continue to work closely with the Congress and the Administration to explore means of fulfilling our mission of promoting maximum employment and price stability.”

## COMPLIANCE NOTES

*Please note: Bill descriptions and links were accurate at the time of listing, but may have been changed for administrative or legislative reasons. Please refer to the latest version of the bill and seek guidance from qualified compliance counsel. ICC does not, under any circumstances, provide legal or implementation advice regarding legislation or regulatory matters.*

**Effective Date: Immediately**

### FHFA, FHA – LOAN LIMITS FOR CONFORMING AND HECM MORTGAGES

As per the American Recovery and Reinvestment Act (ARRA), “HUD will temporarily increase the loan limits of mortgages insured by the Federal Housing Administration (FHA) up to \$729,750. Previously, FHA’s loan limits in very high-cost areas were capped at \$625,500. FHA’s reverse mortgage product known as the Home Equity Conversion Mortgage (HECM) will have a new national mortgage limit of \$625,500, up from the previous limit of high of \$417,000. These increased loan limits are applicable to all FHA-insured mortgage loans endorsed until December 31, 2009.” More information regarding the loan limits can be found at [http://www.fhfa.gov/webfiles/1279/CLLarra022309\\_final.pdf](http://www.fhfa.gov/webfiles/1279/CLLarra022309_final.pdf); detailed information can be found in Mortgagee Letter 09-07 at <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-07ml.doc>.

**Effective Date: Immediately**

### FHA – TEMPORARY SUSPENSION OF BAN ON INSURING MULTI-FAMILY PROPERTIES MEETING CERTAIN CONDITIONS

HUD Mortgagee Letter 09-06 notes that a number of fully operating, self sustaining multi-family properties, which have recently been constructed or rehabilitated, are now unable to secure permanent long-term financing due to the freeze in the capital markets. In order to provide liquidity to these markets, HUD is providing a temporary waiver regarding Section 223(f) eligibility restriction to properties that have been completed or substantially rehabilitated for 3 years prior to the date of application. More information regarding waiver conditions can be found at <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-06ml.doc>.

**Effective Date: Immediately**

### FREDDIE MAC – ANTI-PREDATORY LENDING GUIDELINES

Freddie Mac has issued an Industry Letter to remind lenders of its responsible lending policy and to reiterate some of its policy provisions. According to Freddie Mac: “ This Industry Letter serves to remind Seller/Serviceicers about our anti-predatory lending (APL) requirements set forth in our Guide and provides additional guidance by:

- Providing greater detail about the excessive points and fees threshold that applies to all Mortgages secured by Primary Residences;
- Reminding Seller/Serviceicers that certain Freddie Mac post-settlement delivery fees, if passed on to the Borrower at closing, are included in the points and fees calculations under the federal Home Ownership and Equity Protection Act (HOEPA) of 1994 and State APL laws;
- Restating that no Mortgage is eligible for delivery to Freddie Mac if it is a high-cost home loan in any of the 14 States specified in our Guide, regardless of whether the Seller or third-party originator holds a federal or State charter;
- Providing clarification that if Freddie Mac purchases a high-cost loan under HOEPA or a high-cost home loan secured by property located in one of the 14 specified States, the Mortgage is subject to repurchase regardless of any attempt to cure;
- Reminding Seller/Serviceicers that the Borrower’s rescission rights under the Truth in Lending Act must expire before a Mortgage is delivered for sale to Freddie Mac; and
- Informing Seller/Serviceicers of our expectations about their controls for preventing the sale of high-cost home loans to Freddie Mac.”

The six-page guide can be found at <http://www.freddiemac.com/sell/guide/bulletins/pdf/iltr021209.pdf>.

**Effective Date: Immediately**

### CALIFORNIA – CALIFORNIA FORECLOSURE PREVENTION ACT

California Assembly Bill ABX2-7, the California Foreclosure Prevention Act extends the waiting time required to file a notice of sale from three months to six months after filing a notice of default if certain conditions are met. “This bill, until January 1, 2011, and only with respect to specified loans that were recorded between January 1, 2003, to January 1, 2008, would prohibit a mortgagee, trustee, or other person authorized to take sale from giving a notice of sale for an additional 90 days if the loan at issue is the first mortgage or deed of trust that the property secures, the borrower occupied the property as his or her principal residence at the time the loan became delinquent, and the notice of default has been filed.” There are exceptions and additional provisions cited. More information may be found at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx2\\_7\\_bill\\_20090220\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx2_7_bill_20090220_chaptered.pdf).

**Effective Date: Immediately**

### **COLORADO – REVERSE MORTGAGE INSURANCE REQUIREMENTS**

The Director of the Division of Real Estate has adopted an emergency rule titled, "Increasing the Errors and Omissions Insurance Deductible for Reverse Mortgage Transactions." The rule increases the amount of the deductible limit from \$10,000 to \$21,000 and sets forth additional terms of required coverage. More information can be found at <http://www.dora.state.co.us/real-estate/rulemaking/MB/ERIncEandOInsDeductRevMort-Trans020209.pdf>.

**Effective Date: March 1, 2009**

### **ALASKA -- MORTGAGE LICENSING DEADLINE**

Alaska House Bill HB 162, "An Act relating to mortgage lenders, mortgage brokers, mortgage originators, state agents who collect program administration fees, and other persons who engage in activities relating to mortgage lending; relating to mortgage loan activities; relating to an originator fund; relating to fees for mortgage loan transactions; making certain violations unfair trade practices; relating to persons who are licensed under the Alaska Small Loans Act; and providing for an effective date," becomes effective. This is an omnibus bill that introduces, among other things, licensing to the state of Alaska. Originators, brokers and lenders who were engaged in business when this legislation became effective on July 1, 2008 are now required to be licensed." More information can be found at <http://www.legis.state.ak.us/PDF/25/Bills/HB0162C.PDF>.

**Effective Date: March 1, 2009 (Delayed?)**

### **NEW YORK – POWER OF ATTORNEY REQUIREMENTS**

New York Assembly Bill A.B. 6421-B "recodifies provisions of law relating to establishing powers of attorney, the powers thereof and revocation thereof. The bill also creates a new statutory short form power of attorney. A.B. 6421 can be found at <http://www.titlelaw-newyork.com/Chapter644.pdf>. A nice summary of the law's provisions can be found at [http://www.sandw.com/assets/attachments/Client\\_Adv\\_Changes\\_to\\_Statutory\\_Form\\_of\\_Power\\_of\\_Attorney\\_\(B0856652\)\\_2\).pdf](http://www.sandw.com/assets/attachments/Client_Adv_Changes_to_Statutory_Form_of_Power_of_Attorney_(B0856652)_2).pdf).

Assembly Bill A.B. 04392 "delays from March 1, 2009 until September 1, 2009, the effective date of amendments to the provisions of law providing for powers of attorney. More information can be found at <http://assembly.state.ny.us/leg/?bn=A04392&sh=t>.

**Effective Date: March 2, 2009**

### **COLORADO – DUAL STATUS DISCLOSURES REQUIRED**

The Colorado Division of Real Estate has issued Rule 7-1-1, Dual Status Disclosure, requiring mortgage brokers to inform borrowers if they are also acting as the real estate broker on their transaction. The disclosure must be completed and provided to borrowers within 3 business days after receipt of a loan application or any monies from the borrower. More information can be found at <http://www.dora.state.co.us/real-estate/rulemaking/MB/Adopted/711DualStatusDisclosure010609.pdf>. The disclosure form can be found at [http://www.dora.state.co.us/real-estate/mortgage/documents/forms/Dual\\_Status\\_Disclosure.doc](http://www.dora.state.co.us/real-estate/mortgage/documents/forms/Dual_Status_Disclosure.doc).

**DAYLIGHT SAVINGS TIME BEGINS: March 8, 2009**

### **CHECK YOUR ELECTRONIC DEVICES FOR THE CORRECT TIME**

"Daylight Savings Time begins at 2 a.m. on March 8, 2009. It is important to verify that your electronic devices are correctly set as you may experience problems with automatically inserted document times as well as potential backup issues with overlapping time periods.

**Last Day for Comment: March 9, 2009**

### **REGULATORY AGENCIES – INTERAGENCY COMMUNITY INVESTMENT Q&A**

"The federal financial institution regulatory agencies (FED, OTS, OCC, and FDIC) published a new and revised "*Interagency Questions and Answers Regarding Community Reinvestment*" that, among other things, encourages financial institutions to take steps to help prevent home mortgage foreclosures. The Questions and Answers interpret the agencies' Community Reinvestment Act (CRA) regulations and provide guidance to financial institutions and the public. Should you wish to comment on the proposed Q&A materials, more information can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/20090106a.htm>.

**Effective Date: March 16, 2009**

### **MARYLAND – "HIGHER PRICED" MORTGAGE REQUIREMENTS**

The Maryland Commissioner of Financial Regulations has announced that regulations which reference the "Average Prime Offer Rate" will now be enforced effective March 16, 2009 as the Average Prime Offer Rate is now being published and it appears on the [Federal Financial Institutions Examination Counsel \("FFIEC"\) website](http://www.federalreserve.gov/newsevents/press/bcreg/20090106a.htm). See the "Average Prime Offer Rates-Fixed" and the "Average Prime Offer Rates-Adjustable" tables. More information can be found at <http://www.dllr.state.md.us/finance/advisories/advisory2-09.htm>.

**FED Meeting Date: March 17/18, 2009****FOMC TWO DAY MEETING**

FOMC (Federal Reserve's Federal Open Market Committee) two day meeting. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**Effective Date: March 31, 2009**

**ARIZONA – LOAN ORIGINATOR LICENSING – DATE CHANGE**

Arizona Senate Bill S.B. 1029 provides for a uniform date for the renewal, change to inactive status and license expiration across all three groups managed by the Department of Financial Institutions (DFI): 1) mortgage brokers; 2) mortgage bankers; and 3) commercial mortgage bankers. Currently, the dates to renew a license, request inactive status of a license and the expiration of a license vary across the three groups. For mortgage bankers: Applicable, retroactively, for licenses approved after or renewed on or after March 31, 2009 For Commercial Mortgage Bankers: Applicable for licenses approved after or renewed on or after March 31, 2009 More information can be found at <http://www.azleg.gov/legtext/48leg/2r/bills/sb1029h.pdf>.

**Deadline Date: March 31, 2009**

**DELAWARE – DEADLINE FOR MORTGAGE ORIGINATOR LICENSING**

Mortgage Originators who began employment prior to January 1, 2009 are required to submit a license application. They may continue with their origination duties until such time as a decision is rendered on the license application. For more information can be found at <http://banking.delaware.gov/services/applICENSE/NMLSinfo/MOstartpage.shtml>.

**Deadline Date: March 31, 2009**

**OREGON – MORTGAGE REPORTING**

The Oregon Department of Consumer Services has issued OAR (Oregon Administrative Rule) 441-865-0025 regarding "Residential Mortgage Lending Reports." The rule requires that "on or before March 31 of each calendar year, a mortgage banker or a mortgage broker licensed at any time during the preceding calendar year must file a report concerning the banker's or broker's business and operations conducted during the preceding calendar year related to residential mortgage transactions." More specific details may be found at [http://arcweb.sos.state.or.us/rules/OARS\\_400/OAR\\_441/441\\_865.html](http://arcweb.sos.state.or.us/rules/OARS_400/OAR_441/441_865.html).

**Effective Date: April 1, 2009**

**FNMA: FANNIE MAE – APPRAISAL POLICY AMENDMENTS**

Fannie Mae Announcement 08-30 mandates that Form 1004MC be used for all appraisals on or after April 1, 2009. According to Fannie Mae,

"Due to current conditions in the real estate market, it is paramount that appraisers are provided with sufficient guidance to properly appraise and document the appraisal report. Fannie Mae recognizes the Uniform Standards of Professional Appraisal Practice as the minimum appraisal standards for the appraisal profession. In addition, Fannie Mae has established its own separate appraisal requirements to supplement the Uniform Standards. This Announcement addresses several new or updated appraisal-related requirements and clarifies several other existing policies to help underwriters make sound underwriting decisions when reviewing the appraisal report. More information can be found at <https://www.efanniemae.com/sf/guides/ssq/annltrs/pdf/2008/0830.pdf>.

**Deadline Date: April 1, 2009**

**MICHIGAN MORTGAGE ORIGINATOR LICENSING**

Michigan has recently passed a number of bills that relate to mortgage licensing. The bills: House Bills 6562, 6618 and Senate Bills 1552-1555 can be accessed at [http://www.legislature.mi.gov/\(S\(a4nvry45h0x2mn45tymgydz3\)\)/mileg.aspx?page=Bills](http://www.legislature.mi.gov/(S(a4nvry45h0x2mn45tymgydz3))/mileg.aspx?page=Bills) using the lookup procedure. The date-sensitive bills relating to mortgage licensing are:

Senate Bill 1552 - Secondary Mortgage Loan Officer Registration – "The bill would amend the Secondary Mortgage Loan Act, 1981 PA 125, to *require secondary mortgage loan officers to be registered by the Department of Labor and Economic Growth, Office of Financial and Insurance Regulation (OFIR), beginning April 1, 2009.* Loan officers registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act would be considered registered under the Secondary Mortgage Loan Act (the bill) without having to obtain a second registration. A loan officer could not use the terms 'loan officer,' 'loan originator,' or 'registrant,' or similar terms without obtaining a registration. Reference: <http://www.legislature.mi.gov/documents/2007-2008/publicact/pdf/2008-PA-0325.pdf>.

Senate Bill 1554 - First Mortgage Loan Officers – "The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1652a) to *push back the effective date by which loan officers under the act are required to be registered from January 1, 2009 to April 1, 2009.* In addition, the act currently subjects loan officer registrants to a fingerprint check. The bill would expand this provision to specify that the criminal history check must be conducted by the State Police or the FBI, with the registrant required to pay the appropriate fees required." Reference: <http://www.legislature.mi.gov/documents/2007-2008/publicact/pdf/2008-PA-0327.pdf>.

Senate Bill 1555 – "The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1652) to extend the sunset date of a provision prohibiting residential

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mortgage originators and loan officers from receiving any compensation or other remuneration unless registered. The bill extends the sunset date from December 31, 2008 to March 31, 2009 to conform to the three month delay in implementing the registration requirement.” Reference: <http://www.legislature.mi.gov/documents/2007-2008/publicact/pdf/2008-PA-0328.pdf>.

**Effective Date: April 16, 2009**

#### **HUD – RESPA ‘REQUIRED USE’ PROVISION NOW EFFECTIVE**

In response to a lawsuit filed by the National Association of Home Builders (NAHB), HUD has reportedly agreed to delay the portion of the newly issued RESPA rule which would prohibit home builders and others from offering discounts to purchasers who use their affiliated mortgage companies. The “required use” issue has been a sore point among builders and lenders who claim that the combination allows the home purchaser to close the transaction faster and at potentially better rates. The portion of the RESPA rule which was to go into effect on January 16, 2009 has now been delayed to April 16, 2009. The delay will give HUD 90 days to study the NAHB lawsuit. More information can be found at <http://frwebgate6.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=643942411460+2+2+0&WAIAction=retrieve>.

**FED Meeting Date: April 28/29, 2009**

#### **FOMC TWO DAY MEETING**

The Federal Reserve’s Federal Open Market Committee meets for two days. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**Effective Date: May 1, 2009**

#### **FTC RED FLAG RULES TO BE ENFORCED**

The Federal Trade Commission previously suspended enforcement of the new ‘Red Flags Rule’ from November 1, 2008 to give creditors and financial institutions additional time in which to develop and implement written identity theft prevention programs.” The announcement and the release of an Enforcement Policy Statement *did not affect other federal agencies’ enforcement of the original November 1, 2008 deadline for institutions subject to their oversight* to be in compliance. This delay in enforcement is limited to the Identity Theft Red Flags Rule (16 CFR 681.2), and did not extend to the rule regarding address discrepancies applicable to users of consumer reports (16 CFR 681.1), or to the rule regarding changes of address applicable to card issuers (16 CFR 681.3). The FTC press release can be found at [www.ftc.gov/os/2008/10/081022idtheftredflagsrule.pdf](http://www.ftc.gov/os/2008/10/081022idtheftredflagsrule.pdf) and the enforcement policy statement can be found at [www.ftc.gov/os/2008/10/081022idtheftredflagsrule.pdf](http://www.ftc.gov/os/2008/10/081022idtheftredflagsrule.pdf).

More information can be found at <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm>.

**Effective Date: May 1, 2009**

#### **GSEs: HOME VALUATION CODE OF CONDUCT**

According to the FHFA (Federal Housing Finance Agency) it has entered into an agreement with New York State Attorney General Andrew Cuomo to implement a revised “Home Valuation Code of Conduct” that would not necessitate the firing of in-house appraisers.

According to Fannie Mae, The Code of Conduct will “help enhance the integrity of the home appraisal process in the mortgage finance industry. The Home Valuation Code of Conduct will be effective for single-family mortgage loans (except government-insured loans) that are originated on or after May 1, 2009, and delivered to Fannie Mae” [or Freddie Mac]. The 6-page Home Valuation Code of Contact can be found at <https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/appcode/pdf/hvcc.pdf>.

**Effective Date: May 1, 2009**

#### **VA: REVISED LOAN SUMMARY SHEET NOW MANDATORY**

With regard to revisions to VA Form 26-0286, the VA Loan Summary Sheet, lenders will be required to report additional information on all regular (also referred to as “cash-out”) refinance loans. The additional data will enable VA to more effectively monitor aspects of our program. The updated form is available on the VA form website at <http://www.va.gov/vaforms> and more information can be obtained at [http://homeloans.va.gov/circulars/26\\_09\\_1.pdf](http://homeloans.va.gov/circulars/26_09_1.pdf).

**Effective Date: May 1, 2009 (Extended from January 1, 2009) (Extended to January 1, 2010)**

#### **MASSACHUSETTS – SECURITY OF “PERSONAL” INFORMATION**

The Office of Consumer Affairs and Business Regulation has once again filed revised identity theft regulations that were designed to preserve the privacy of consumers by increasing the level of security on personal information held by businesses and other entities. The regulations will take effect Jan. 1, 2010, and mandate that personal information – a combination of a name along with a Social Security number, bank account number, or credit card number – be encrypted when stored on portable devices, or transmitted wirelessly or on public networks. Encryption of personal information on portable devices carrying identity data like laptops, PDAs and flash drives must also be completed by Jan. 1, 2010, and will ensure better protection of personal information. More information can be found at <http://www.mass.gov/Eoca/docs/idtheft/201CMR17amended.pdf>.

**Effective Date: May 11, 2009****USPS – POSTAL RATE HIKE**

The price of postage is going up. The benchmark first class stamp will be priced at \$0.44 each. It is suggested that you purchase “Forever Stamps” which will hold their value forever. A great hedge against inflation for large mailers. The new prices can be found at <http://www.usps.com/prices/pricechanges.htm>.

**Effective Date: May 19, 2009****SOUTH DAKOTA – APPRAISER INFLUENCE LEGISLATION**

South Dakota House Bill H.B. 1124 is an Act to prohibit improper influence regarding real estate appraisals. The bill’s general provisions state: “No real estate appraiser with an interest in a real estate transaction or the financing of any loan secured by real estate involving an appraisal assignment may improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal by:

1. Coercion, extortion, or bribery;
2. Withholding or threatened withholding of payment for an appraisal fee;
3. Conditioning of the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached;
4. Requesting that the appraiser report a predetermined opinion, conclusion, or valuation or the desired valuation of any person; or
5. Any other act or practice that impairs or attempts to impair an appraiser’s independence, objectivity, and impartiality.

More information can be found at <http://legis.state.sd.us/sessions/2009/Bills/HB1124ENR.pdf>.

**Effective Date: June 16, 2009****FEMA – FLOOD HAZARD DETERMINATION**

Note: FEMA Form 81-93, Standard Flood Hazard Determination Form (SFHDF), which expired on October 31, 2008, has been replaced by FEMA Form 81-93, Standard Flood Hazard Determination Form (SFHDF) with a December 31, 2011 expiration date.

To allow users of the Form time to update their systems to the new version, the effective date for mandatory use of the new Form will be June 16, 2009. SFHDFs completed on or after that date must be completed using the new Form for compliance purposes. A fillable PDF version of the form and instructions can be accessed at <http://www.fema.gov/pdf/nfip/sfhdf.pdf>.

**FED Meeting Date: June 23/24, 2009****FOMC TWO DAY MEETING**

The Federal Reserve’s Federal Open Market Committee meets for two days. The announce-

ment of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>.

**Effective Date: July 1, 2009****ALASKA – CONSUMER PERSONAL INFORMATION SECURITY**

Alaska House Bill H.B. 65 relates “to breaches of security involving personal information, credit report and credit score security freezes, protection of social security numbers, care of records, disposal of records, identity theft, credit cards, and debit cards, disclosure of the names and addresses of permanent fund dividend applicants, and to the jurisdiction of the office of administrative hearings; amending Rules 60 and 82, Alaska Rules of Civil Procedure; and providing for an effective date.” More information can be found at <http://www.legis.state.ak.us/PDF/25/Bills/HB0065Z.PDF>.

**Effective: July 1, 2009****CALIFORNIA: FORECLOSURE COUNSELING REGULATION**

California Assembly Bill A.B. 180 regulates the activities of foreclosure consultants.

“Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, except as specified. Existing law prohibits a foreclosure consultant from entering into an agreement to assist the owner in arranging, or arrange for the owner, the release of surplus funds prior to 65 days after the trustee’s sale is conducted. This bill would, instead, prohibit a foreclosure consultant from entering into an agreement described above at any time.”

“Existing law allows a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by the foreclosure consultant. Existing law requires that the contract be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. Existing law prohibits a foreclosure consultant from taking any power of attorney from an owner, except to inspect documents as provided by law.”

“This bill would instead allow a homeowner to cancel a contract with a foreclosure consultant within 5 days after signing the contract, and to do so by mail, e-mail, or facsimile. It would require that a contract with a foreclosure consultant be written in the language principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, and would require the foreclosure consultant, in specified circumstances, to provide the owner, before the owner signs the contract, with one or more copies of a completed contract written in specified other languages, and would make a conforming

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change in this regard. The bill would prohibit a foreclosure consultant from taking any power of attorney from an owner for any purpose.”

“The bill would require a foreclosure consultant to register with the Department of Justice in accordance with certain requirements, and to obtain and maintain a surety bond of \$100,000. A violation of these provisions would be a crime. By creating a new crime, the bill would impose a state-mandated local program. The bill would permit the Department of Justice to refuse to issue, or to revoke, a foreclosure consultant’s registration for any violation of the law regulating foreclosure consultants.”

“The bill would create the Foreclosure Consultant Regulation Fund in the State Treasury for the deposit of fees submitted to the Department of Justice for registration as a foreclosure consultant, and make moneys in that fund available to the department upon appropriation by the Legislature for the costs of administering the registration program.”

More information can be found at [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0151-0200/ab\\_180\\_bill\\_20080925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0151-0200/ab_180_bill_20080925_chaptered.pdf).

**Effective Date: July 1, 2009**

#### **MISSISSIPPI – DOCUMENT FORMATTING FOR RECORDING**

Mississippi House Bill H.B. 475 is “an act to adopt document formatting standards for certain instruments filed with the clerk of the chancery court; to provide for the payment of a fee for nonconforming documents; to amend section 89-5-25, Mississippi code of 1972, in conformity thereto; and for related purposes.” More information can be found at <http://index.js.state.ms.us/isysnative/UzpcRG9idW1lbnRzXDlwMDhcbm90ZGVhZFxoYlwwNDAwLTA0OTIcaGIwNDc1c2cucGRm/hb0475sg.pdf#xml=http://10.240.72.35/isysquery/irl2bf9/2/hilite>.

**Effective Date: July 1, 2009**

#### **NEW YORK – MORTGAGE LENDING REFORM BILL – SERVICE REGISTRATION REQUIREMENTS EFFECTIVE**

The service registration requirements of New York Senate Bill S8143-A (Same as Assembly Bill A10817) are now effective. Assembly Bill A10817 implements “AN ACT to amend the real property actions and proceedings law, the civil practice law and rules, the banking law and the general obligations law, in relation to home mortgage loans; to amend the penal law and the criminal procedure law, in relation to creating new crimes relating to mortgage fraud; and to amend the real property law, in relation to distressed property consulting contracts.” This is an omnibus bill containing multiple provisions regarding foreclosure disclosures and procedures and establishing consumer protections involving provisions relating to *duty of care* and *ability to pay provisions*. The bill requires registration of mort-

gage services and criminalizes mortgage fraud. More information can be found at <http://assembly.state.ny.us/leg/?bn=A10817&sh=t> or <http://assembly.state.ny.us/leg/?bn=S08143&sh=t>.

**Effective Date: July 1, 2009**

#### **SOUTH CAROLINA – RECORDED SSNs, SECURITY FREEZE AND BREACH NOTIFICATION**

South Carolina Senate Bill S.B. 453 enacts the “Financial Identity Fraud and Identity Theft Protection Act.” This is an omnibus security bill that is a must read for those doing business in South Carolina. Most provisions are effective December 31, 2008 and the security breach notification portion is effective on July 1, 2009. More information can be found at [http://www.scstatehouse.net/sess117\\_2007-2008/bills/453.doc](http://www.scstatehouse.net/sess117_2007-2008/bills/453.doc).

**Effective Date: August 1, 2009**

#### **FEDERAL – MORTGAGE ORIGINATOR LICENSING**

As per Title V, the Secure and Fair Enforcement for Mortgage Licensing Act, of the Housing and Economic Recovery Act of 2008 (HERA), all residential mortgage loan originators must be state licensed or federally registered. Please check your state’s licensing requirements to insure that you have the appropriate license or waiver to avoid further problems. You may also wish to review HUD’s requirements at <http://www.hud.gov/offices/hsg/sfh/mps/smllicact.cfm>.

**FED Meeting Date: August 11/12, 2009**

#### **FOMC TWO DAY MEETING**

Federal Reserve’s Federal Open Market Committee two day meeting. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**Effective Date: September 1, 2009**

#### **FTC: PRE-RECORDED TELEMARKETING CALLS**

The Federal Trade Commission Final Telemarketing Sales Rule Amendments provisions require that all prerecorded telemarketing calls have the recipients signed written agreement to receive the pre-recorded calls. More information can be found at <http://www.ftc.gov/os/2008/08/R411001tsrfrn.pdf>.

**Effective Date: September 1, 2009**

#### **NEW YORK – POWER OF ATTORNEY REQUIREMENTS**

New York Assembly Bill A.B. 6421-B “recodifies provisions of law relating to establishing powers of attorney, the powers thereof and revocation thereof. The bill also creates a new statutory short form power of attorney. A.B. 6421 can be found at <http://www.titlelaw->

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[newyork.com/Chapter644.pdf](http://newyork.com/Chapter644.pdf). A nice summary of the law's provisions can be found at [http://www.sandw.com/assets/attachments/Client\\_Adv\\_Changes\\_to\\_Statutory\\_Form\\_of](http://www.sandw.com/assets/attachments/Client_Adv_Changes_to_Statutory_Form_of)

[Power of Attorney \(B0856652\) \(2\).pdf](#). The bill was delayed by the implementation of Assembly Bill A.B. 04392 which delayed the effective date from March 1, 2009 until September 1, 2009. More information can be found at <http://assembly.state.ny.us/leg/?bn=A04392&sh=t>.

**Effective Date: September 17, 2009**

#### **FED: TECHNICAL AMENDMENT TO REGULATION B (EQUAL CREDIT OPPORTUNITY ACT)**

The Federal Reserve has published a technical amendment to ECOA updating the OTS address that is used in adverse action notices. The new address must be used for all adverse action notices starting September 17, 2009. It is recommended that this new address be used as soon as practical. The Federal Register notice can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-21629.pdf>.

**FED Meeting Date: September 22/23, 2009**

#### **FOMC TWO DAY MEETING**

Federal Reserve's Federal Open Market Committee two day meeting. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**Effective Date: October 1, 2009**

#### **FEDERAL RESERVE – REGULATION-Z PROVISIONS**

The provisions of Regulation-Z, which require a subprime lender to determine the borrower's ability to pay and eliminate certain prepayment penalties, are now in effect. Review this legislation carefully as the consequences of violating these rules can be prohibitively expensive. The highlights of the final rule can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/E1515A7162514E5EAD0C295B038E101F.htm> and the 419-page Draft Federal Register Notice can be found at <http://www.federalreserve.gov/boarddocs/meetings/2008/20080714/draftfedreg.pdf>.

**Effective Date: October 1, 2009**

#### **FEDERAL RESERVE – REGULATION “C” HMDA REPORTING**

The Federal Reserve has put forth revised rules for reporting price information with respect to higher-priced mortgage loans. “The rules are being conformed to the definition of ‘higher priced mortgage loan’ adopted by the Board under Regulation Z (Truth in Lending) in July of 2008. Since 2004, Regulation C has required lenders to collect and report the spread between the annual percentage rate (APR) on a loan and the yield on Treasury securities of comparable maturity if the

spread is equal to or greater than 3.0 percentage points for a first-lien loan (or 5.0 percentage points for a subordinate lien loan). Under the final rule, a lender will report the spread between the loan's APR and a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type if the spread is equal to or greater than 1.5 percentage points for a first-lien loan (or 3.5 percentage points for a subordinate lien loan).” More information can be found in the original October 24, 2008 Federal Register which can be found at <http://files.ots.treas.gov/86420.pdf>.

**Effective Date: October 1, 2009**

#### **CONNECTICUT – ELECTRONIC SIGNATURES & RECORDING**

Connecticut House Bill H.B. 5535 authorizes the use of electronic signatures and recording in connection with real property transactions as per the URPERA (Uniform Real Property Electronic Recording Act). More information can be found at <http://www.cga.ct.gov/2008/ACT/PA/2008PA-00056-R00HB-05535-PA.htm>.

**DAYLIGHT SAVINGS TIME ENDS: November 1, 2009**

#### **CHECK YOUR ELECTRONIC DEVICES FOR THE CORRECT TIME**

“Daylight Savings Time ends at 2 a.m. on November 1, 2009. It is important to verify that your electronic devices are correctly set as you may experience problems with automatically inserted document times as well as potential backup issues with overlapping time periods.

**FED Meeting Date: November 3/4, 2009**

#### **FOMC TWO DAY MEETING**

The Federal Reserve's Federal Open Market Committee meets for two days. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**FED Meeting Date: December 15/16, 2009**

#### **FOMC TWO DAY MEETING**

Federal Reserve's Federal Open Market Committee two day meeting. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2009>

**Effective Date: December 31, 2009**

#### **INDIANA – FIRST LIEN MORTGAGE LENDING ACT**

The original Indiana House Bill H.B. 1359 excluded first lien mortgage brokers. As of January 1, 2009, First Lien Mortgages are now covered under the Indiana Loan Brokers Act. Review the sections which become obsolete after December 31, 2008 and others which become effective after January 1, 2009. More information can be found at <http://www.in.gov/legislative/bills/2008/PDF/HE/HE1359.1.pdf>.

**Mandatory Compliance Date: January 1, 2010****HUD – NEW STANDARDIZED GFE AND HUD-1 MANDATORY**

As a result of RESPA reform, HUD will require the use of the new standardized GFE and HUD-1 forms. The 3-page Standard Good Faith Estimate can be found at: <http://www.hud.gov/content/releases/goodfaithestimate.pdf> and the 3-page HUD-1 Settlement Statement can be found at <http://www.hud.gov/offices/hsg/sfh/res/hud1.pdf>.

**Mandatory Compliance Date: January 1, 2010****FED – REVISION TO REGULATION “C” – HMDA REPORTING**

Final rules to amend Regulation C (Home Mortgage Disclosure) to revise the rules for reporting price information on higher-priced loans are now mandatory. The rules are being conformed to the definition of “higher priced mortgage loan” adopted by the Board under Regulation Z (Truth in Lending) in July of 2008. Since 2004, Regulation C has required lenders to collect and report the spread between the annual percentage rate (APR) on a loan and the yield on Treasury securities of comparable maturity if the spread is equal to or greater than 3.0 percentage points for a first-lien loan (or 5.0 percentage points for a subordinate lien loan). Under the final rule, a lender will report the spread between the loan’s APR and a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type if the spread is equal to or greater than 1.5 percentage points for a first-lien loan (or 3.5 percentage points for a subordinate lien loan). The final rule is effective October 1, 2009. Compliance is mandatory for loan applications taken on and after that date and for loans that close on and after January 1, 2010 (regardless of their application dates). More information can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-25320.pdf>.

**Effective Date: January 1, 2010****FHFA – GSEs TO REQUIRE LOAN LEVEL DATA IDENTIFIERS REQUIRED**

Effective with mortgage applications taken on or after Jan. 1, 2010, Freddie Mac and Fannie Mae are required to obtain loan-level identifiers for the loan originator, loan origination company, field appraiser and supervisory appraiser to conform with existing regulations requiring the identification of lenders, settlement service vendors and licensed individuals. **Warning: ICC has initiated inquiries about the form and format of these numbers – and found that the final details have not been finalized and will be subject to further announcement.** For those wanting to read the FHFA release, it can be found at <http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf>.

**Effective Date: January 1, 2010****ARIZONA – LOAN ORIGINATOR LICENSING**

Arizona Senate Bill S.B. 1028 establishes a loan originator licensing program with the Department of Financial Institutions (DFI) and specifies continuing education requirements for mortgage brokers and mortgage bankers. More information may be found at <http://www.azleg.gov/legtext/48leg/2r/bills/sb1028h.pdf>.

**Effective Date: January 1, 2010****KENTUCKY – LICENSING/REGISTRATION**

Kentucky House Bill H.B. 552 is an “emergency” omnibus bill containing requirements on licensing and the conduct of the practice of mortgage lending within the State of Kentucky. More information can be found at <http://www.lrc.ky.gov/record/08RS/HB552.htm>. The bill became effective on April 24, 2008 with some of the licensing provisions becoming effective on January 1, 2010.

**Effective Date: January 1, 2010****MASSACHUSETTS – SECURITY OF “PERSONAL” INFORMATION**

The Office of Consumer Affairs and Business Regulation has once again filed revised identity theft regulations that were designed to preserve the privacy of consumers by increasing the level of security on personal information held by businesses and other entities. The regulations will take effect Jan. 1, 2010, and mandate that personal information – a combination of a name along with a Social Security number, bank account number, or credit card number – be encrypted when stored on portable devices, or transmitted wirelessly or on public networks. Encryption of personal information on portable devices carrying identity data like laptops, PDAs and flash drives must also be completed by Jan. 1, 2010, and will ensure better protection of personal information.

More about the Massachusetts identity theft protection initiative can be found at: <http://www.mass.gov/Eoca/docs/idtheft/201CMR17amended.pdf>.

**FED Meeting Date: January 26/27, 2010****FOMC TWO DAY MEETING**

Federal Reserve’s Federal Open Market Committee two day meeting. The announcement of the meeting results will become available on the Federal Reserve website after 2:00 p.m. (EST) at <http://www.federalreserve.gov/FOMC/#2010>

**DAYLIGHT SAVINGS TIME BEGINS: March 14, 2010****CHECK YOUR ELECTRONIC DEVICES FOR THE CORRECT TIME**

“Daylight Savings Time begins at 2 a.m. on March 14, 2010. It is important to verify that your electronic devices are correctly set as you may

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experience problems with automatically inserted document times as well as potential backup issues with overlapping time periods.

**Effective Date: April 1, 2010**

#### **FEDERAL RESERVE – REGULATION-Z PROVISIONS**

The provisions of Regulation-Z which require a subprime lender to implement escrow accounts for the first twelve months of a loan for **site-built homes** are in effect. Review this legislation carefully as the consequences of violating these rules can be prohibitively expensive. The highlights of the final rule can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/E1515A7162514E5EAD0C295B038E101F.htm> and the 419-page Draft Federal Register Notice can be found at <http://www.federalreserve.gov/boarddocs/meetings/2008/20080714/draftfedreg.pdf>.

**Effective Date: July 31, 2010**

#### **HUD – MANDATORY COMPLIANCE WITH SAFE MORTGAGE LICENSING ACT (Note Exemption)**

HUD has set July 31<sup>st</sup> as the deadline for all loan originators to be licensed in their respective states under a system that is SAFE-Act compliant. The only exemption involves originators who possess a valid license that was granted under another system that was in-place prior to a SAFE Act-compliant system; these people must be licensed under a SAFE Act-compliant system by December 31<sup>st</sup>, 2010. Guidance on HUD requirements involving the SAFE Act Licensing program can be found at <http://www.hud.gov/offices/hsg/sfh/mps/smliaact.cfm>.

**Effective Date: October 1, 2010**

#### **FEDERAL RESERVE – REGULATION-Z PROVISIONS**

The provisions of Regulation-Z which require a subprime lender to implement escrow accounts for the first twelve months of a loan for **manufactured housing** are now in effect. Review this legislation carefully as the consequences of violating these rules can be prohibitively expensive. The highlights of the final rule can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/E1515A7162514E5EAD0C295B038E101F.htm> and the 419-page Draft Federal Register Notice can be found at <http://www.federalreserve.gov/boarddocs/meetings/2008/20080714/draftfedreg.pdf>.

**DAYLIGHT SAVINGS TIME ENDS: November 7, 2010**

#### **CHECK YOUR ELECTRONIC DEVICES FOR THE CORRECT TIME**

“Daylight Savings Time ends at 2 a.m. on November 7, 2010. It is important to verify that your electronic devices are correctly set as you may experience problems with automatically inserted

document times as well as potential backup issues with overlapping time periods.

**Effective Date: December 31, 2010**

#### **HUD – MANDATORY COMPLIANCE WITH SAFE MORTGAGE LICENSING ACT (For those Previously Exempt)**

HUD has set December July 31, 2010 as the deadline for all loan originators who may have been exempt from obtaining a mortgage originator's license under a SAFE Act-compliant system due to an existing mortgage originator's license issued under a non-SAFE Act-compliant system to be licensed in their respective states under a system that is SAFE-ACT compliant. Guidance on HUD requirements involving the SAFE Act Licensing program can be found at <http://www.hud.gov/offices/hsg/sfh/mps/smliaact.cfm>.

### **OTHER NEWS**

#### **THE FAILURE OF INDYMAC BANK: TALES FROM THE CRYPT ...**

The Treasury Department Inspector General has released a report on the failure of Indy Mac Bank. The 83-page report, titled: “SAFETY AND SOUNDNESS: Material Loss Review of IndyMac Bank, FSB,” is well worth reading as a cautionary tale regarding failed business models, poor management, regulators too close to those they regulate and the general failure of regulatory procedures in difficult times. The table of contents almost tells the entire story at a glance.

##### **Causes of IndyMac's Failure**

- High Risk Business Strategy and Aggressive Growth
- Lack of Core Deposits
- Inadequate Loss Reserves
- Unsound Underwriting Practices
- Impact of Senator Schumer's Letter on the Thrift\

##### **OTS's Supervision of IndyMac**

- OTS Conducted Regular and Timely Examinations but Did Not Always Address Key Areas of the Thrift
- Concerns About Nontraditional Loans
- OTS Did Not Require Correction of IndyMac's Poor Loan Underwriting
- OTS Did Not Issue an Enforcement Action Until June 2008
- OTS Should Have Taken Prompt Corrective Action Earlier
- OTS's Lessons Learned Review

The “Results in Brief” tell the entire story.

***It was a failure of the business model ...*** “The

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primary causes of IndyMac's failure were largely associated with its business strategy of originating and securitizing Alt-A loans on a large scale. This strategy resulted in rapid growth and a high concentration of risky assets. From its inception as a savings association in 2000, IndyMac grew to the seventh largest savings and loan and ninth largest originator of mortgage loans in the United States. During 2006, IndyMac originated over \$90 billion of mortgages."

#### **Flaws in policy products and procedures ...**

IndyMac's demise can be laid squarely on the parameters of its business model which featured:

- An aggressive growth strategy;
- Use of Alt-A and other nontraditional loan products;
- insufficient underwriting;
- credit concentrations in residential real estate in the California and Florida markets;
- heavy reliance on costly funds borrowed from the Federal Home Loan Bank (FHLB) and from brokered deposits;
- Loans without verification of the borrower's income or assets;
- Loans to borrowers with poor credit histories; and
- Appraisals obtained on underlying collateral were often questionable

"As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), sub-prime loans, 80/20 loans, and other nontraditional products. **Ultimately, loans were made to many borrowers who simply could not afford to make their payments.**"

**Shifting the risk ...** "Regardless, the thrift remained profitable as long as it was able to sell those loans in the secondary mortgage market."

**The reckoning ...** "When home prices declined in the latter half of 2007 and the secondary mortgage market collapsed, IndyMac was forced to hold \$10.7 billion of loans it could not sell in the secondary market.

**The trigger event ...** "Its reduced liquidity was further exacerbated in late June 2008 when account holders withdrew \$1.55 billion in deposits. This 'run' on the thrift followed the **public release of a letter from Senator Charles Schumer to the FDIC and OTS.** The letter outlined the Senator's concerns with IndyMac. While the run was a contributing factor in the timing of IndyMac's demise, the underlying cause of the failure was the unsafe and unsound manner in which the thrift was operated."

There is no doubt that the Office of Thrift Supervision was complicit in the failure due to its lax or

conflicting regulatory actions. What appears to be missing from this report is any mention of an OTS official, Darrel Dochow, who according to a Wall Street Journal Report allegedly "accused of helping mortgage lender IndyMac Bancorp alter its records so it appeared to be in better shape -- weeks before it was seized by the government." According to the Wall Street Journal

"A senior bank regulator was removed from his job after being accused of helping mortgage lender IndyMac Bancorp alter its records so it appeared to be in better shape -- weeks before it was seized by the government. The Office of Thrift Supervision has reassigned its top West Coast official, **Darrel Dochow, who was also a controversial figure in the regulatory lapses surrounding the savings-and-loan crisis of the late 1980s.**" According to published reports, "as head of supervision and regulation at the Federal Home Loan Bank Board in Washington, Dochow ignored pleas from California state regulators to intervene in the impending collapse of Irvine-based Lincoln Savings & Loan. He was eventually demoted, but worked his way back up the ranks and was promoted in September 2007 to be OTS' regional director for the West." The Los Angeles Times on February 21, 2009 announced Dochow's retirement.

**Trivia ...** For those who do not know the historical antecedent of IndyMac, it was originally founded in 1985 by Angelo Mozilo and David Loeb (may he rest in peace) as Countrywide Mortgage Investment for the sole purpose of collateralizing Countrywide's "jumbo" loans too big to be sold to Fannie Mae and Freddie Mac. It was spun off as an independent entity to be known as IndyMac in 1977. The name IndyMac is a contraction of the name Independent Mortgage Corporation -- hence IndyMac.

For those wishing to read the full Inspector General's report, it can be found at <http://www.ustreas.gov/inspector-general/audit-reports/2009/oig09032.pdf>. The Wall Street Journal story, "**Regulator Let IndyMac Backdate Infusion,**" can be found at <http://online.wsj.com/article/SB122998621544328009.html>. The Inspector General's letter to the Ranking Member of the Senate Finance Committee can be found at: <http://online.wsj.com/public/resources/documents/IndyMac12-208-EricThorsonsletter.pdf>.

#### **NAMB SUES THE FHFA OVER APPRAISAL ISSUES**

The National Association of Mortgage Brokers (NAMB) has filed a lawsuit in the United States District Court for the District of Columbia against the Federal Housing Finance Agency (FHFA) Director, James B. Lockhart, over the Home Valuation Code of Conduct (HVCC) included in agreements between New York Attorney General Andrew Cuomo and FHFA, Fannie Mae and Freddie Mac.

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According to NAMB, “The HVCC does nothing but drive up costs for consumers and push small businesses out of the market,” said NAMB President, Marc Savitt. “The HVCC will drastically reduce the ability of mortgage brokers to provide consumers with an efficient and cost-effective means of obtaining a mortgage.”

“NAMB strongly supports policy initiatives that seek to ban coercion of appraisers. However, NAMB believes it is *critical for mortgage and real estate professionals to maintain an appropriate level of contact with appraisers to ensure appraisal quality and independence*. NAMB argues the HVCC is a ‘de facto’ regulation and holds the FHFA in violation of the Administrative Procedures Act of 1992. The HVCC is arbitrary and capricious, contrary to the intent of Congress and in direct conflict with regulations, policies and guidelines regarding appraisal standards already issued.” The lawsuit can be accessed at [https://www.namb.org/images/namb/GovernmentAffairs/NAMB%20Lawsuit\\_HVCC%20\(Feb%2023,%202009\).pdf](https://www.namb.org/images/namb/GovernmentAffairs/NAMB%20Lawsuit_HVCC%20(Feb%2023,%202009).pdf).

#### HOUSE DELAYS “CRAM DOWN” LEGISLATION

The United States House of Representatives has delayed its final vote on H.R. 1106, otherwise known as the “Helping Families Save Their Homes Act of 2009.” At issue were the “cram down” provisions which would allow bankruptcy judges to modify the rates and terms of mortgage loans to assist underwater consumers to remain in their homes with a “reasonable” payment plan. There is considerable opposition to allowing the judiciary to modify mortgages as this would alter the sanctity of contract law and property rights. While the industry is not opposed to loan workout programs which involve equity appreciation sharing or the extension of maturities to reduce monthly loan payments, many believe that allowing the judiciary to arbitrarily and capriciously modify mortgages without stringent guidelines might introduce further turmoil in an already shaky market. Unanticipated consequences involving the securitization of the subject mortgage are also weighing on the decision to move forward with this legislation. The current status of the bill indicated that it has been referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, and Veterans’ Affairs, for a period to be subsequently determined by the Speaker of the House, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. It should be noted that this bill is being championed by John Conyers and Alcee Hastings, Barney Frank and other House democrats who are tightly committed to housing activism and affordable housing. For those wishing to read the underlying bill, H.R. 1106 can be found at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1106>:

Also in the legislative works is Paul Kanjorski’s loan modification bill, H.R. 788 that attempts to provide a safe harbor for mortgage servicers who

engage in specified mortgage loan modifications. The bill can be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h788rh.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h788rh.txt.pdf).

#### “FRIEND OF ANGELO” SENATOR RELEASES LOAN DOCUMENTS

Senator Christopher Dodd (D-CT) has finally fulfilled his pledge to release mortgage documents relating to a beneficial Countrywide transaction which the Senator claims was proper and conveyed no special privileges that were not available to the general public. Of course, that assumes that the general public can call the Chairman of a major national lender and have his loan hand-walked through the process. Even now, after waiting 193 days to release the promised documents Senator Dodd is playing cagey. Reporters were said to be able to review the documents in his office but could not photocopy them. He did permit reporters to keep a copy of a compliance report prepared by his lawyers and a third-party forensic group, CrossCheck Compliance. There does not seem to be any proof that Dodd approached Mozilo or Countrywide directly. But transaction does give the appearance of impropriety as Dodd’s Senate Banking Committee was engaged in legislation affecting Countrywide and the mortgage industry.

For those wishing to read the CrossCheck report, it can be found at <http://media.nbcbayarea.com/documents/Final+Report.pdf>. It is suggested that you download this report promptly as it is unknown how long the report will remain posted. A great story on the issue can be found at <http://www.portfolio.com/news-markets/top-5/2008/06/12/Countrywide-Loan-Scandal>.

#### CHUTZPAH OR BUSINESS AS USUAL: FIRM UNDER INVESTIGATION LOBBYING FOR TAX BREAK

According to the Charlotte Observer, “Atlanta-based Beazer [Beazer Homes USA] is the subject of a mortgage lending probe involving the FBI, the Internal Revenue Service and the Department of Housing and Urban Development (HUD). The N.C. Real Estate Commission is also investigating the company’s lending practices. Beazer Homes USA is one of 37 companies that signed on to a letter last week urging senators to give businesses a waiver on income taxes they’d owe on canceled debt.” A great illustration of the dictum, the show must go on in spite of apparent obstacles. More information on this story can be found at <http://www.charlotteobserver.com/breaking/story/512856.html>.

**FYI:** “On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, commonly referred to as the ‘Stimulus’ bill. The bill contains approximately \$290 billion in tax incentives, including a provision deferring the inclusion of income from the cancellation of business indebtedness for up to five years, and further allowing such deferred income to be included ratably over the following

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five years.” For those who want further information on the “Long-Term Deferral of Certain Discharged Business Indebtedness,” there is a wonderful article on the Blank Rome LLP web site at <http://www.blankrome.com/index.cfm?contentID=37&itemID=1862>.

### BARNEY FRANK: GRANDSTANDING FOR THE CROWD

Perhaps to deflect attention from his role in preventing increased regulatory oversight of Fannie Mae and Freddie Mac, Barney Frank is calling upon Northern Trust to return TARP funds because they engaged in a business-building activity without the prior approval of the House doyen. The financial crime of the century saw Northern Trust hosting a PGA Golf Tournament and hosting several related parties. In a letter to the CEO of Northern Trust, Barney Frank wrote:

*“We are dismayed and angered* to learn that Northern Trust recently spent millions of dollars on a PGA golf tournament sponsorship and associated parties at the same time it has taken over \$1.5 billion in federal stabilization funding under the Troubled Asset Relief Program. According to published media reports, your bank not only sponsored the Northern Trust tournament at the Riviera Country Club, but also hosted clients and employees at places like the Beverly Wilshire and Ritz Carlton hotels and gave away Tiffany souvenirs. If this is accurate, we are demanding you take corrective action.”

“At a time when millions of homeowners are facing foreclosure, businesses and consumers are in dire need of credit, and the government is trying to keep financial institutions – including yours – alive with billions in taxpayer funds, *this behavior demonstrates extraordinary levels of irresponsibility and arrogance.*”

*“We insist that you immediately return to the federal government the equivalent of what Northern Trust frittered away on these lavish events.* Federal taxpayers should not and will not stand for such *abuses*, and we will insist that *any future Treasury support for Northern Trust be conditioned on a thorough reform of your company’s policies and practices.*”

“We look forward to your reply and immediate reimbursement of these funds.”

Business people everywhere should be outraged at the behavior of a sitting Representative who has done more to destroy our financial system, and in particular the mortgage industry, with his social engineering experiments. Frank is dismayed and angered about the situation and yet does nothing to address the ethical lapses of those in Congress who are lavishly wined and dined – and freely use the taxpayer’s money to go off on so-called “fact finding” missions which are little more than disguised vacations and jun-

kets. Speaking of extraordinary levels of irresponsibility and arrogance, what does Frank see when he looks in the mirror? While some events are little more than sops to a CEO’s ego and desire to mingle with the “swells,” most events do have some business purpose and result in either direct income or the good will of established customers who could easily take their business elsewhere. Am I the only one to see that this is a blatant threat to Northern Trust to follow Frank’s directions or suffer the potential loss of government support in the future? All-in-all, Barney Frank has clearly and concisely demonstrates the power and arrogance of Congress which move the nations precipitously close to the brink of disaster. Barney Frank’s letter can be found at [http://www.house.gov/apps/list/press/financialsvcs\\_dem/press0224095.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press0224095.shtml).

### INFLUENCING LEGISLATION THE “SAFE” WAY IT’S DONE?

It is an open secret, especially here in California, that one of the safest ways to influence pending legislation is to reward the legislators by supporting their charitable causes. Especially if the cause is willing to provide an “award” that will receive heavy media coverage. After all, who can argue with a charitable donation? It appears this “cut-out” method of influencing legislators is alive and well in the financial industry.

According to TheHill.com, “Financial firms and other companies receiving billions of dollars in federal bailout money spent hundreds of thousands of dollars to pay for meetings and charitable gifts on behalf of lawmakers. In the last six months of 2008, as a financial crisis enveloped the country and lawmakers voted on a \$700 billion financial rescue package, eight companies that would benefit from that package spent roughly \$366,000 on events and charities connected to members of Congress, according to a review of congressional lobbying records.”

“Fannie Mae and Freddie Mac, the government-sponsored mortgage companies, spent more than \$330,000 in the period, but since being taken over by their regulator in September have stopped donating money to politically affiliated charities. At one event in December, several of the biggest financial firms in the country sponsored a reception on the trading floor of the New York Stock Exchange (NYSE) and dinner at the NYSE Club where Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, was the keynote speaker. Bank of America contributed \$35,000 for the Dec. 18 event, which was organized by the National Gay and Lesbian Chamber of Commerce, records show. Justin Nelson, the chamber’s president, said Citigroup contributed \$17,500 and Goldman Sachs another \$35,000, although records do not include those expenses. The three banks have received a combined \$105 billion in bailout money from the Troubled Asset Relief Program

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(TARP). Bank of America and Citigroup have required repeated bailouts from the government.” More information on this story can be found at <http://thehill.com/leading-the-news/bankrolling-charitable-gifts-2009-02-02.html>.

### **BIZARRO WORLD: PAUL JACKSON SPEAKS OUT**

There are any number of shrewd observers of the current financial scene as it applies to political machinations and the mortgage industry. Unfortunately, no matter how loud they shout, the system seems to be rigged by those who, due to their political connections, size, media presence or availability of discretionary funds, can game the system for their own advantage. Here is a worthwhile article to consider as we plunge headlong into supplying millions, if not billions, of dollars to so-called non-profit housing groups; many of which are ideologically against risk-based pricing and the generation of profits in a capitalistic system. That is not to say that they personally object to making money for themselves and their cohorts, just that they exhibit disdain for those who do in without the facade of a non-profit, non-taxpaying institution that was chartered to improve the world. Here is Jackson's piece.

“Am I the only one that thinks a partnership between Neighborhood Assistance Corp. of America and Fannie Mae is a little, well, odd? This story at the WSJ has been bubbling in the back of my head since I saw it last week:

‘Fannie Mae has reached an agreement to work with one of its former critics, Neighborhood Assistance Corp. of America, to prevent foreclosures by reworking home mortgages to make them easier to afford.’

... The agreement with Fannie hasn't been announced but was confirmed by the company and by Bruce Marks, chief executive of the NACA, a Boston nonprofit with a history of holding protests to pressure banks into cooperating with its efforts to provide mortgages on what it considers fair terms.

Here's the thing about Marks and his crusade for long-term affordable loans, irrespective of any personal opinion on the man; he doesn't much care about the original terms of the lending. If a borrower can't afford the terms, the terms aren't any good and represent the lender's outright gouging and mistreatment of the borrower. Any loan is therefore only as good as the borrowers' ability to afford it, and if the borrower's circumstances change, so too should the terms of the note. Such goes the mantra here.

Philanthropist or not, Marks clearly makes money off of this process — he's able to collect Federal grants in the millions from the likes of NeighborWorks America on one hand, while also making money by being the originator of the “affordable” loans to troubled borrowers, on the other. Perhaps he is providing a valuable social service, a point many will surely argue.

But his approach is clearly a strategy that allows

money to be made on both the left and right hands, non-profit or not. And I'll admit upfront that I'm a hardened skeptic on the preferential tax-treatment given many non-profit entities.”

Paul Jackson's work on HousingWire.com can be found at <http://www.housingwire.com/2009/02/03/bizarro-world>. The Wall Street Journal story cited can be found at <http://online.wsj.com/article/SB123328152873231973.html>.

### **A MORTGAGE VIRGIN?**

Virgin Money, one of the newer wholesale mortgage lenders, and part of Richard Branson's Virgin Group, has reaffirmed its commitment to wholesale lending; and is actively seeking new business. The web site proclaims: “Meet Virgin Money — a wholesale mortgage lender. We're ready to hook up with a few class act clients to help you do what you do faster and better. We offer fixed and adjustable rate mortgages spiced with the famously recognized Virgin brand.”

The basis for the company's success lies in Lendia which serves as a mortgage processing outsourcer who touts the benefits of replacing onerous fixed in-house costs with the variable cost of paying only for the processing required. Lendia, founded in 1999 and located in Massachusetts, was acquired by Virgin Money USA in June, 2008 and has reported steady growth. Knowing Branson's lack of traditional business practices and his intolerance for wasteful inefficiency, this might be a major push into the mortgage market. It certainly bears watching.

### **WHERE IS THE TARP MONEY GOING?**

Since former Treasury Secretary Paulson's assertion that the first billions of the TARP (Troubled Assets Relief Program) were being used by financial institutions to acquire other financial institutions and shore up their own balance sheets rather than making commercial or consumer loans, it comes as no surprise that the Treasury Department has changed course in midstream. In spite of their promise to provide funds to sound banks as part of their liquidity injection strategy, many problematical banks have received funds with an apparent lack of prudent oversight. A good story on situation can be found at the Propublica web site at <http://www.propublica.org/article/banks-getting-tarp-money-lending-less-than-other-banks-090203>.

## **PRIVACY & SECURITY**

### **WARNING: DO NOT OPEN UNKNOWN EXCEL FILES**

While it is good policy to always know the source of your data files, particular caution is being urged with respect to unknown Excel Files. “Microsoft is investigating new public reports of vulnerability in Microsoft Office Excel that could allow remote code execution if a user opens a specially crafted Excel file. At this time, we are aware only of limited and targeted attacks that

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attempt to use this vulnerability.” Microsoft recommend: “Do not open or save Office files that you receive from un-trusted sources or that are received unexpectedly from trusted sources. This vulnerability could be exploited when a user opens a file.” The Microsoft Security Advisory dated February 24, 2009 can be found at <http://www.microsoft.com/technet/security/advisory/968272.mspx>.

### SECURITY: ADOBE FIX – BETTER LATE THAN NEVER

Many security conscious techies are ticked at Adobe for not acknowledging and patching a critical vulnerability that has been identified in Adobe Reader 9 and Acrobat 9 and earlier versions. According to Adobe, this vulnerability would cause the application to crash and could potentially allow an attacker to take control of the affected system. Considering that there were numerous reports from well-regarded security conscious sources that this vulnerability was being exploited, Adobe seemed to take an inordinately long time to respond. “Adobe is planning to release updates to Adobe Reader and Acrobat to resolve the relevant security issue. Adobe expects to make available an update for Adobe Reader 9 and Acrobat 9 by March 11th, 2009. Adobe is planning to make updates for Adobe Reader 7 and 8, and Acrobat 7 and 8, available by March 18th. In the meantime, Adobe is in contact with anti-virus and security vendors, including McAfee, Symantec and others, on this issue in order to ensure the security of our mutual customers. More information on protection for this issue from anti-virus and security vendors is now available on the [Adobe Product Security Incident Response Team blog](#).” The Adobe Advisory commenting on this vulnerability can be found at <http://www.adobe.com/support/security/advisories/apsa09-01.html>.

Reminder: ICC’s document sets which use Adobe’s PDF format do not contain any executable code and cannot be used to compromise your system.

### PEER-TO-PEER FILE ACCESS VULNERABILITIES

For those who combine personal and professional data on their computers and/or allow others, and especially children, to use their systems, be advised that significant data breaches are occurring when peer-to-peer (P2P) file sharing systems are installed. Originally used to share songs and video, these peer-to-peer systems are being exploited by hackers and other evildoers to download financial and company sensitive data for direct exploitation or ransom. If you should have a peer-to-peer file sharing program on your system, you may want to immediately isolate and encrypt personal and sensitive information. Better yet, fully uninstall the program and perform a comprehensive systems sweep for malware. Due to onerous state and federal regulations regarding data breaches, it does not seem to be an acceptable risk to allow peer-to-peer file sharing systems to exist in a business environment.

### THE DANGER OF HARDWARE WARRANTIES

When purchasing laptops or other electronic equipment at large “box” stores, we are almost offered the opportunity to purchase an equipment protection policy. For the record, most of these extremely profitable policies are unnecessary as they merely duplicate the manufacturer’s existing coverage during the 90-day or so period when most hardware fails. But setting aside the ethics and economics issues, let’s consider the security problems involved with purchasing such protection policies.

One, if your dead system is returned to the manufacturer without fully destroying or disabling the data on the hard drive (almost impossible to do with a dead drive), you risk exposing your sensitive information to others – and possibly incurring legal state and federal sanctions for the exposure.

Two, if your system is left to be repaired, the service technician and all others who have physical or electronic access to the machine while it is in their possession also represents a major vulnerability. One need only consider those who were prosecuted when child pornography was found on their machines. It didn’t discover itself and you can bet the technician did not accidentally find it – they were looking at the files contained on the machine.

And three, if the technician decides to replace the hard drive and copy your data on the new drive, the authorized and certified destruction of the old disk cannot be assured.

Even a “certificate of compliance” with proper secure data handling procedures will not absolve you from liability. So think twice about purchasing that protection policy and the need to encrypt your sensitive data.

### MAJOR DATA ENCRYPTION EFFORT AHEAD

The Obama Administration’s fiscal 2010 budget allocates a minimum of \$355 to bolster the Cyber Security initiatives of the Department of Homeland Security’s Cybersecurity division. The funds are allocated towards securing and hardening the public and private sector infrastructure. For financial firms, this means that the mandatory encryption of sensitive and non-public personal identifying information is on the horizon. Since most proprietary and packaged programs do not encrypt selectable data fields, this could represent a major cost for financial sector firms and those who might be forced to switch vendors due to security concerns.

### ANOTHER TALE OF LIFE IN THE CITI ...

Following up on last month’s tale of Citibank’s seeming disregard for best security practices, comes another security lapse. You are requested to activate your new credit card and choose a PIN (Personal Identification Number) using the telephone’s touch-keypad. Now imagine your surprise when two letters arrive the same day.

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One shows your name, address and account number and the other shows the PIN number you have chosen. Wonderful! Another example of the security systems and procedures at Citibank. Thank heaven the government is paying closer attention to the bank's operations – or is that paying and paying and paying attention?

## TECHNOLOGY

### IS YOUR SITE IE8 COMPLIANT?

Now that we are approaching the release Version 8 of Microsoft's Internet Explorer, you may want to check that your site remains compatible with a browser which will be adopted by millions of users in the United States and abroad. Even though the browser contains a "compatibility button," many sites may not display correctly when viewed with IE8. The problem arises primarily because Microsoft finally decided to do the right thing and has become more standards oriented. Many sites that use browser work-arounds or hacks may experience problems. To see some of the big names with incompatible sites, you may want to visit ZDNet's list of 2400 poorly performing sites at <http://blogs.zdnet.com/microsoft/?p=2072>.

### MBA TURNS MISMO OPERATIONS OVER TO MERS

Apparently in an effort to jump-start the adoption of the MISMO (Mortgage Industry Standards Maintenance Organization) set of standards over competing and/or conflicting other standards, the Mortgage Bankers Association has ceded managerial control to the people at MERS (Mortgage Electronic Registration System) who are deeply engaged in the automation of the mortgage industry and whose "been there, done that" experience will be extremely beneficial moving forward. There are some in the industry that see this as an indication that the MBA no longer has the will or the finances to support an open-ended effort which relies mainly on individual contributors. Others see it more as a reaction to NARs increasing technological initiatives to create a major impact in the real estate industry starting from a point of sale perspective rather than a sub-segment of the paperwork puzzle. In any event, look for MISMO to make a quantum leap forward.

### MORE TRANSPARENCY THROUGH AUTOMATED REPORTING

The American Securitization Forum is continuing to implement its Project RESTART including a proposal for monthly servicer reporting on deals through maturity. For those wishing to review the proposed MBS reporting package including data field specifications, it can be found at: [http://www.americansecuritization.com/uploadedFiles/ASF\\_2\\_9\\_09\\_RESTART\\_RFC.pdf](http://www.americansecuritization.com/uploadedFiles/ASF_2_9_09_RESTART_RFC.pdf)

## OCC AND OTS EXPAND DATA COLLECTION ON MORTGAGE PERFORMANCE

"The Office of the Comptroller of the Currency and the Office of Thrift Supervision are expanding the scope of the mortgage performance data gathered from national banks and thrifts to include additional information on the affordability and sustainability of loan modifications. The additional data will show how loan modifications changed the total amount of borrowers' monthly principal and interest payments in 2008. The next edition of the agencies' joint Mortgage Metrics Report, scheduled for release next month, will review categories of loan modifications that:

- Increased borrowers' monthly principal and interest payments.
- Brought no change to payments.
- Reduced payments by 10 percent or less.
- Reduced payments by more than 10 percent.

More information can be found at <http://www.occ.treas.gov/ftp/release/2009-9.htm>. The Mortgage metric data dictionary and reporting field definitions can be found at <http://www.occ.treas.gov/ftp/release/2009-9a.pdf>.

## PUBLICATIONS OF INTEREST

### SIGTARP: SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

From the Special Inspector General's first report to Congress, we find that there is no assurance that the TARP (Troubled Assets Relief Program) is guaranteed to work.

"The Troubled Asset Relief Program ("TARP") **represents a massive and unprecedented investment of taxpayer money** designed to stabilize the financial industry and promote economic recovery. **The long-term success of the program is not assured.**"

"Success — or failure — will depend on whether the Department of the Treasury ("Treasury") **has spent, and will spend in the future, that massive investment wisely and efficiently to attain the program's goals.** While it is too early to draw any conclusions on that ultimate issue, this assessment must necessarily begin with an understanding of what Treasury has done thus far."

Perhaps one of the most useful features of this report is the glossary which explains complex financial terms in layman's language. (See page 109) For those interested in seeing exactly who received the initial funds, there is a long list of financial institutions that should satisfy your curiosity. The 189-page SIGTARP report to Congress can be found at <http://www.sig tarp.gov>

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[reports/congress/2009/SIGTARP\\_Initial\\_Report\\_to\\_the\\_Congress.pdf](http://reports/congress/2009/SIGTARP_Initial_Report_to_the_Congress.pdf).

To remain hip and au courant, the BUSH TARP program has now been re-branded the OBAMA FSP (Financial Stability Plan). Note also that the old CPP (Capital Purchase Program) has been re-branded CAP (Capital Assistance Program). Whether to induce further confusion or to remove the remnants of the previous Administration – you may look forward to four years of confusing, conflicting and overlapping acronyms which are definitely the sign of a master bullpucky spreader.

### **FHFA MOUNTS CAMPAIGN TO STAY ENGAGED**

In an almost desperate effort to erase the tarnished reputation of its predecessor OFHEO (Office of Federal Housing Enterprise Oversight) and its Chairman, James B. Lockhart, who was touting the safety and soundness of the GSEs almost to the point of their conservatorship, we are seeing more useful information coming from the Agency.

**James Lockhart at the American Securitization Forum in Las Vegas ...** This speech contains background information which will help those in the mortgage industry understand the GSE's. Well worth reading, if for no other purpose than to obtain a sense of the role and status of the GSE's in today's troubled environment.

“It is important to recognize how incredibly large the GSEs are. Their combined debt outstanding and guaranteed mortgage-backed securities (MBS) are \$6.7 trillion. That is more than publicly held Treasury debt, despite the very rapid recent growth in Treasury issuance. Over the last two years especially, Fannie Mae, Freddie Mac, and the Federal Home Loan Banks have played a tremendously important role in the mortgage market.”

“Fannie Mae and Freddie Mac have two businesses: (1) investing in whole loans and MBS, including their own; and (2) guaranteeing residential and multifamily mortgage-backed securities. Their retained portfolios pose large market and credit risks. We kept that under check by capping the growth of those portfolios after discovering serious accounting and control problems at the Enterprises several years ago. The cap has been temporarily raised to \$850 billion for each this year. Their MBS guarantee business continues to grow to support the market.”

“From 1997-2003, Fannie Mae's and Freddie Mac's market share gradually grew to almost 55 percent. From 2004-2006, the private mortgage market dominated, and Fannie's and Freddie's business sank pretty dramatically, with their market share dropping below 35 percent. Then as the private market started to freeze up in 2007, Fannie's and Freddie's market share took off—up to

73 percent in 2008. The market share of FHA/VA-insured mortgages, which are generally pooled into Ginnie Mae mortgage-backed securities, has risen even more dramatically, rising from 3 percent in 2006 to 35 percent in the fourth quarter of 2008.”

“In addition to the Enterprises, FHFA regulates the Federal Home Loan Banks, which have continued to play an important role in the mortgage market over the last two years by providing secured advances to banks, credit unions, and insurance companies. Federal Home Loan Bank advances hit the trillion dollar mark in October. Historically, we have always thought of the Federal Home Loan Banks as providing low-cost funding to small and medium-sized banks, but their customer range goes well beyond that. With the recent consolidations, about one-third of their total advances are to the Big Four bank holding companies. In total, the Federal Home Loan Banks have almost \$1.4 trillion in assets of which only 5 percent is in private-label mortgage-backed securities. But these securities, which originally were AAA-rated, are starting to take bigger other-than-temporary impairments (OTTI).”

“Now turning to the GSEs credit exposure, serious delinquencies of 90-days or more have risen across the board but are far lower at Fannie Mae and Freddie Mac at about 2 percent than even the prime market at 2.9 percent or the whole market at 5 percent. For subprime mortgages, serious delinquencies are almost 20 percent. Serious delinquencies across all categories are continuing to rise. Several factors have led to a steady rise in serious delinquency rates over the last 18 months. The most pervasive factor was the lack of underwriting discipline in the 2005 through 2007 period, which was dominated by private-label securities. Investor demand was plentiful regardless of credit quality given the assumption that house prices would continue to rise.”

Lockhart's speech to the American Securitization Forum can be found at <http://www.fhfa.gov/webfiles/823/ASFSpeech2909.pdf> and another iteration of the material can be found in Lockhart's speech at before the Association of Government Accountants 7th Annual National Leadership Conference in Washington, D.C. which can be found at <http://www.fhfa.gov/webfiles/1247/AGASpeech21909.pdf>.

**Additional reports and testimony regarding the refinance initiatives of the GSEs are available ...** In the past few years, we continue to hear tales of lenders and servicers telling Congress that they are making every effort to assist distressed borrowers. And yet, the borrowers are reporting a far different story. That lenders and servicers are attempting to determine if the borrower has any further capacity to pay and then trying to access this capacity. If loan modifica-

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tions are proposed, they either are non-substantive “too little and too late” or are merely programmatic RE-FIs into preferred programs with additional closing charges. Therefore, it might be interesting to read the statement of Patrick J. Lawler, Chief Economist, Federal Housing Finance Agency that was presented to the House Financial Services Committee Subcommittee on Housing and Community Opportunity. You will find that the statement is both self-serving and illustrative of the problem. The statement can be found at: [www.fhfa.gov/webfiles/1303/PLloanmodtestimony22409.pdf](http://www.fhfa.gov/webfiles/1303/PLloanmodtestimony22409.pdf). Also of interest may be the FHFA statement on Fannie Mae and Freddie Mac Refinance Initiatives which can be found at <http://www.fhfa.gov/webfiles/1257/FNFRERefinInitiatives22009.pdf> and the Report on Homeowner Assistance which presented to Congress which may be obtained at <http://www.fhfa.gov/webfiles/911/FPMgrReportRelease21209.pdf>.

#### **DOWNPAYMENT ASSISTANCE PROGRAMS IN AN OBAMA ADMINISTRATION?**

There is little or no doubt that housing issues are well understood by President Barack Obama. Obama not only was a community activist engaged in housing issues but also had a significant working relationship with the affordable housing activists at ACORN. Therefore, we believe that an Obama Administration will be highly receptive to downpayment programs even though there is statistical evidence that those who purchase properties with DPA programs also have some of the highest mortgage loan default rates and foreclosure experience. In an effort to bolster their case for DPA programs, the non-profit Nehemiah Corporation of America has commissioned a study from Robert Waste, a professor of public policy and administration at California State University, Sacramento, and Robert Fountain, a former professor at CSU, Sacramento with more than 25 years' experience in teaching and research on issues related to housing and regional economics.

Highlights include:

- More than 200,000 new and existing homes were sold last year with DPA. (The research covered the 12 months from December 2007 through November 2008.) Roughly 40% of all loans originated by the Federal Housing Administration used DPA.
- Nehemiah helped families purchase more than 78,000 homes last year. More than 25% of the sales involved foreclosed properties.
- About 40% of the borrowers were households headed by minorities and more than one-third were headed by females.
- Of 235,000 new jobs created last year, 195,000 came from new-home construction and the rest from new-home sales. DPA also accounted for \$4.6 billion in total tax revenues last year.

While the study does emphasize the impact of DPA programs on the housing market, it is believed that the success of any DPA program lies in the appropriate screening of candidates to weed out those who will lack sustainable income to support their home purchase and those who might allow the property to fall further into disrepair due to the lack of discretionary income to cover routine maintenance expenses which are not considered as a normal part of the underwriting decision. More information can be found at <http://www.nehemiahcorp.org/pressMediaDisplay.cfm?incl=pr/01292009.cfm>.

#### **TREASURY: EXECUTIVE COMPENSATION GUIDELINES**

The Treasury Department has issued a new set of *guidelines* on executive pay for financial institutions that are or will be receiving government assistance to assist in mitigating the current financial crisis. It should be noted that these guidelines are a public relations ploy to assuage the outrage of the general public who is deeply concerned that taxpayer money not be used to support the often outsized salaries and perks given to the top executives of financial institutions. It appears that there are loopholes in this process and that it is a feel-good public relations gesture supported by an administration which regards big business, in fact almost any profit-making business, with disdain.

According to the Treasury Department, “The measures announced today are designed to ensure that the compensation of top executives in the financial community is closely aligned not only with the interests of shareholders and financial institutions, but with the taxpayers providing assistance to those companies. The Treasury guidelines on executive pay seek to strike the correct balance between the need for strict monitoring and accountability on executive pay and the need for financial institutions to fully function and attract the talent pool that will maximize the chances of financial recovery and taxpayers being paid back on their investments. The proposals below, such as emphasizing restricted stock that vests as the government is repaid with interest, seek to strike exactly that balance.”

“The guidelines distinguish between banks participating in any new generally available capital access program and banks needing ‘exceptional assistance.’ Generally available programs have the same terms for all recipients, with limits on the amount each institution may receive and specified returns for taxpayers. The goal of these programs is to help ensure the financial system as a whole can provide the credit necessary for recovery, including providing capital to smaller community banks that play a critical role in lending to small businesses, families and others. The previously announced Capital Purchase Program is an example of a generally available capital access program.” More information regarding the guidelines can be found at <http://www.ustreas.gov/press/releases/tg15.htm>.

## TREASURY: FINANCIAL STABILITY PLAN

For those who believe in fairy tales, here is the Treasury Department's new Financial Stability Plan which will establish three new assistance programs and impose certain restrictions on the recipients of these funds. We believe that this is a fairy tale because, as we have seen in the past, programs are subject to frequent modification and tolerant of case-by-case exceptions. They are also impacted by the needs to become more congruent to new legislation and thus, are not written in stone and binding on all participants. A fact sheet describing the Financial Stability Plan can be found at <http://www.financialstability.gov/docs/fact-sheet.pdf> and Timothy "Turbo Tax" Geithner's presentation can be found at <http://www.ustreas.gov/press/releases/tg18.htm>.

## OTS FORECLOSURE FREEZE

The Office of Thrift Supervision has urged its regulated financial institutions to suspend foreclosures on owner-occupied homes until the finalization and implementation of the Treasury Department's Financial Stability Plan. More information can be found at [www.ots.treas.gov/?p=PressReleases&ContentRecord\\_id=660fa9f3-1e0b-8562-eb9e-1636207722f4](http://www.ots.treas.gov/?p=PressReleases&ContentRecord_id=660fa9f3-1e0b-8562-eb9e-1636207722f4).

## CONNECTIONS

### DÉJÀ VU AGAIN: FREDDIE MAC INVESTIGATES ITSELF

There is a reason that most people do not trust financial institutions when it comes to ethics and wrongdoing. I recall those other famous self-investigation which resulted in a slap-on-the-wrist for those who cooked the books in order to gain multi-million dollar bonuses in a time when they were losing billions of dollars. Consider the following report from the Associated Press.

"Lawyers hired by mortgage finance giant Freddie Mac are quietly investigating the firm's own \$2 million lobbying campaign, The Associated Press has learned. The lobbying effort helped quash proposed new regulations on the company before the housing market collapsed."

"One of Washington's leading law firms, Covington & Burling LLP, *has spent more than a month interviewing current and former Freddie Mac employees and executives, according to three people familiar with the matter.* These people spoke on condition of anonymity because they fear reprisals if they were identified. The inquiry is led by former Justice Department prosecutor Stephen Anthony, who specializes in corporate internal investigations."

The problem with most internal reviews is that they are not conducted under oath and the investigators lack the ability to compel testimony. Lying to a non-governmental investigator is not a punishable offense and people in positions of power often simply fail to remember events.

"The inquiry inside Freddie Mac follows stories by the AP about the company secretly hiring Republican consulting firm DCI Group of Washington to stop a proposal in the Senate in 2005 sponsored by Sen. Chuck Hagel, R-Neb. The legislation would have forced Freddie Mac and Fannie Mae to sell hundreds of billions of dollars worth of assets from their portfolios of mortgages and mortgage-backed securities. At the time, the portfolios were highly lucrative but their value plunged when the housing market collapsed."

"The DCI Group did not file lobbying reports describing the work it was performing. At the time, Freddie Mac executives who knew about the initiative referred to it among themselves as 'the stealth lobbying campaign,' according to people familiar with the matter. DCI Group spokesman Geoffrey M. Basye says the firm practiced the highest ethical standards and coordinated with Freddie Mac's lawyers to ensure uncompromising compliance with all applicable federal and state laws and regulations."

Is DCI being sanctioned for not filing reports on a potential attempt to influence legislators on behalf of Freddie Mac? Are those who were contacted being listed and examined for potential "conflicts of interests?" And what were the promises being made to these legislators in exchange for their cooperation? I would have a hard time believing that those who were lobbied merely settled for a position paper being thrust into their hands.

The people familiar with the internal inquiry told the AP that Anthony has interviewed current and former Freddie Mac employees about three issues raised by the AP stories:

- An accounting of the work done for the \$2 million in payments to the DCI Group. It targeted 17 Republican senators in 13 states working to defeat Hagel's regulatory legislation by convincing prominent constituents and financial contributors the bill would hurt the housing boom. The measure was never brought to a vote and died.
- An accounting of six-figure payments to 52 outside lobbying firms and political consultants in 2006, including details about what work, if any, the consultants performed for the money paid to their firms. The consultants included former House Speaker Newt Gingrich and ex-Sen. Alfonse D'Amato. The payments to the 52 consultants amounted to \$11.7 million. D'Amato's firm, which was paid \$240,000, declined to comment. Gingrich's firm was paid \$300,000 for strategic advice on a number of issues.
- An accounting of personal use by Freddie

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Mac executives of company-paid tickets and a company-leased skybox at the Verizon Center. Freddie Mac executive Hollis McLoughlin, who oversaw the \$2 million campaign by DCI, was photographed by the AP in Freddie Mac's leased skybox four months ago at the season home opener of the Washington Capitals hockey team.

"Covington & Burling has represented Freddie Mac in other controversies, including its defense against charges it made illegal campaign contributions. Freddie Mac settled the matter by paying a record \$3.8 million fine imposed by the Federal Election Commission in 2006. Separately, Covington & Burling represented Freddie Mac in roughly 20 lawsuits alleging the company fraudulently inflated the price of its stock from 1999-2002. All have been settled."

It appears that Freddie Mac's internal investigation may be more about limiting their exposure to sanctions arising from their activities than actually finding the facts. The choice of law firms hardly is encouraging as it appears that this powerful, well-connected legal machine specializes in making Freddie Mac's problems go away in return for a huge fee and a token payment to whatever regulatory body seems offended at the time. The real question remains: Freddie Mac is now operating under the conservatorship of the government, why isn't this matter being pursued by the FBI, the Congressional Ethics Committee and the hyper-partisan Henry Waxman (D-CA) who styles himself as a champion of good government. Perhaps the reason is political, the democrats were caught trying to make deals with the republicans and thus expose both parties to charges of cronyism and self-interested politics – the public be damned. But an even better question is why is Freddie Mac's oversight Agency, James Lockhart's Federal Housing Finance Agency, directing the probe and hiring the investigating lawyers? Is this another case of FHFA inaction which is reminiscent of its predecessor's, the Office Federal Housing Enterprise Oversight (OFHEO), failure to rein in the GSE's to curtail growing systemic risk and inappropriate behavior?

#### DEFAULT IS OURS ...



The circle of blame continues to rotate around an Administration that is loath to allow bad financial institutions to fail and is hell-bent on implementing new socially-engineered affordable housing programs. Already Fannie Mae and Freddie Mac are being urged to loosen their mortgage loan refinancing requirements by lowering or eliminating certain credit-score requirements, reducing income documentation standards, waive the need for property re-appraisals and to be more tolerant of minorities and others who may have "accidentally" purchased more home than they could realistically afford. There is also no comment forthcoming from lenders on whether or not they will turn over egregious violations of application truthfulness to the appropriate authorities. Considering the significant amount of reported and unreported damage done to GSE operations by government meddling, we can only wait and see if forthcoming GSE initiatives will turn into yet another "bailout facility."

Some of the reported changes include such revolutionary enhancements such as allowing borrowers to qualify for refinancing homes with up to 80% LTV loans with credit scores less than Fannie Mae's 580 minimum and lowering income documentation requirements to one current pay stub. Call me crazy, but isn't this the type of governmental directive that led to widespread default on NINJA (No Income, No Job, No Assets verifications) or as it is popularly called a "stated doc" loan.

Consider this entry in a New York Times Article titled "Fannie Mae Eases Credit to Aid Mortgage Lending," dated September 30, 1999 ...

"In a move that could help increase home ownership rates among minorities and low-income consumers, the *Fannie Mae Corporation is easing the credit requirements on loans that it will purchase from banks and other lenders*. The action, which will begin as a pilot program involving 24 banks in 15 markets -- including the New York metropolitan region -- *will encourage those banks to extend home mortgages to individuals whose credit, is generally not good enough to qualify for conventional loans*. Fannie Mae officials say they hope to make it a nationwide program by next spring."

"In moving, even tentatively, into this new area of lending, *Fannie Mae is taking on significantly more risk, which may not pose any difficulties during flush economic times. But the government-subsidized corporation may run into trouble in an economic downturn, prompting a government rescue similar to that of the savings and loan industry in the 1980's.*"

"In July, the *Department of Housing and Urban Development proposed that by the year 2001, 50 percent of Fannie Mae's and Freddie Mac's portfolio be made up of loans to low and moderate-income borrowers*. Last year, 44 percent of the loans Fannie Mae

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purchased were from these groups.”

*“The change in policy also comes at the same time that HUD is investigating allegations of racial discrimination in the automated underwriting systems used by Fannie Mae and Freddie Mac to determine the credit-worthiness of credit applicants.”*

It should be noted that poor people are less creditworthy than more affluent people and that the government's demands to provide loans to people who do not ordinarily qualify under statistically proven underwriting guidelines remains a prescription for disaster. We now know, in 20-20 hindsight, that the Wizards of Wall Street cannot use hedges and credit default swaps to protect against this form of government-mandated risk. We seem to be reaping the consequences of the government's actions – although they continue to point the finger elsewhere. For those wishing to travel back to 1999 to see the handwriting on the wall, the article can be located at <http://query.nytimes.com/gst/fullpage.html?res=9C0DE7DB153EF933A0575AC0A96F958260&sec=&spon=&pagewanted=2>.

It seems that the current system is rational if the goal is to secure the political patronage of voters who are suffering from the current downturn in the economy. However, there is no practical business advantage for advancing these political policies if they only stave off the inevitable for a relatively short period of time.

If the government is serious about being part of the solution, rather than remaining the source of the problem, they would expedite proactive reviews on existing mortgages and assist people to move into more affordable housing rather than futilely attempting to salvage a home that borrowers could not afford in the first place. Not to mention the problem of addressing the great number of illegal aliens who have defaulted on their properties. These people should be extended the common courtesy of having time to seek other accommodations, but I do not see why taxpayer money should be used to bailout non-citizens who were oversold properties by ethnic real estate agents and loan brokers who seemingly took advantage of their customers and the mortgage system. The only way to solve this crisis is to clear out those unaffordable properties by letting the prices seek their own level, supplying funds to creditworthy borrowers who can afford these homes now priced at a realistic price point, and by seeking to rationalize government by downsizing the bureaucracy and significantly reducing the spending on special interest and ideological programs. If you plot real estate prices against traditional values (plus inflation), you might see that we are trying to recover a grossly-inflated market – to no avail. Want to secure compliance quickly, consider the prosecution of those real estate agents, loan officers, appraisers and processors who forged or altered application data.

## TRIGGER LEADS – RECENT COURT CASE MAY BE OF INTEREST (OR NOT)

Verizon Communications has lost a court case which is thought by some mortgage lenders to potentially have some application in restricting the sale of trigger leads by the credit depositories. For those not familiar with the term, “trigger lead,” it is a lead that is sold to your competitors when you request a mortgage-related credit report. Thus your competitors can immediately pitch your hard-won client with a lowball offer or confuse your client enough to sidetrack your offer. It is the position of the credit repository that because the credit report request is reportable on a credit report, they have the right to use this information in any manner that does not violate the FCRA (Fair Credit Reporting Act). Mortgage industry sources have sought not to delay reporting, but to prohibit the credit repository from immediately generating a salable lead from the credit request order.

In this case the United States Court of Appeals has upheld a lower court ruling that bars Verizon from using information gathered from its competitors during the technical process of arranging a new connection. Verizon argued that it should be allowed to use this “porting” information in their customer retention programs. Having learned that a customer was about to switch to another carrier, Verizon allegedly would contact the customer with an equivalent or better offer designed to retain the customer's business. Whether or not this case can be used in preventing a credit repository from selling leads based on credit report orders to your competitors is a case for the courts. It is likely that the court will uphold the process as it provides a competitive stimulus for a lender or broker to offer the consumer the best price consistent with their credit capacity and the existing competition. For those wishing to read the opinion, it can be found at <http://pacer.cad.c.uscourts.gov/common/opinions/200902/08-1234-1164087.pdf>.

## INTERESTING LINKS

[www.homepricehere.com](http://www.homepricehere.com)

Too good to be true? Is it possible in today's turbulent marketplace for any firm to guarantee that they will protect up to 90% of your home purchase price? According to Home Price Guarantee's web site:

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- The HPG contract protects up to 90% of the value of your home.
- Buy a home any time with complete peace of mind even in a volatile and uncertain real estate market.
- The HPG contract protects your home equity, not the lender's equity.
- Your financial and retirement planning are easy.
- Your home value is now assured.
- Financing is available for HPG contracts.

According to a press release, contracts are available for homes priced between \$150,000 and \$2,500,000 for a one-time fee of 1.25 percent of the properties purchase price. There are no continuing fees. They are actively soliciting representatives. Little else is known about this Las Vegas-based company and they failed to return our telephone calls.

[www.financialstability.gov](http://www.financialstability.gov)

[www.fhfa.gov](http://www.fhfa.gov)

The Federal Housing Finance Agency presents an interesting site containing numerous fact and figures relating to the GSEs and the mortgage marketplace in general. Definitely worth a look.

## FinancialStability.gov

This site is coming soon.

On Tuesday, February 10th, Treasury Secretary Timothy Geithner outlined a comprehensive plan to restore stability to our financial system. In the address, Secretary Geithner discussed the Obama Administration's strategy to strengthen our economy by getting credit flowing again to families and businesses, while imposing new measures and conditions to strengthen accountability, oversight and transparency in how taxpayer dollars are spent. And Secretary Geithner explained how the financial stability plan will be critical in supporting an effective and lasting economic recovery.

For more information, please visit <http://www.treas.gov/initiatives/eesa/>

### NEW: Capital Assistance Program (CAP)

[CAP White Paper](#)

[CAP Term Sheet](#)

[CAP FAQs](#)

[Application Guidelines for CAP](#)

[CPP Guidelines Under the American Recovery and Reinvestment Act](#)

### Homeowner Affordability and Stability Plan

[Homeowner Affordability and Stability Plan Executive Summary](#)

[Homeowner Affordability and Stability Plan Fact Sheet](#)

[Helping Homeowners Under the Homeowner Affordability and Stability Plan: Three Cases](#)

For those who want to track the government's financial operations and access position papers, frequently asked questions and other details of the government's attempt to resolve the current financial crisis, this is a prime web site for useful (?) information.

## WE ARE YOUR DOC PREP COMPANY – NOT YOUR COMPETITOR

ICC does not use the information you provide for any purpose other than to prepare your loan documents. We do not make your information available to anyone, especially third-party vendors. We do not engage in statistical analysis of your data nor do we suggest alternative loan programs, insurance or other products.

For those who would like to receive our informative newsletter automatically each month, please contact Lori at [info@iccdocs.com](mailto:info@iccdocs.com) to be added to the list. We are committed to protecting your privacy and your e-mail address will never be rented, sold, or otherwise shared with any third-parties. View our privacy policy at: <http://www.iccdocs.com/Business/Privacy2.htm>

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