



July 2003

NEWSLETTER

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

Prime	4.00%
6 month Libor	1.14625%

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

Treasury Securities	
5 Yr.	2.810%
10 Yr.	3.940%
15 Yr.	3.940%
20+ Yrs.	4.910%

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

ICC NEWS

LORI – 20 YEARS OF GREAT SERVICE

Lori Lytle, the authoritative voice of ICC’s Customer Relations is celebrating her 20th anniversary with ICC. Accepting increasing responsibilities over the years to include managing customer service, compliance and forms programming, Lori represents a standard of excellence, which serves as an inspiration to her co-workers. This is a most magnificent achievement in these times of revolving-door employment. You may wish her well by e-mail at lori@iccdocs.com or by calling her direct at (888) 437-3627.

WATCHING MIDDLE NAMES AND GENERATIONALS...

It has come to ICC’s attention that the latest wrinkle in mortgage fraud is for parents and children to swap social security numbers for credit report and loan purposes...

The latest problem in identity theft is parents who use their children’s social security number or children who use their parent’s social security number for purposes of obtaining mortgage loans. ICC urges all processors to include generational information, such as Sr. Jr. III IV, and middle names when drawing documents and credit reports.

NEWS OF NOTE

FCRA REFORM BASED ON FACT!

On July 16, 2003, Ranking Democratic Member Barney Frank’s (D-MA) House Financial Services Subcommittee “reported out” HR 2622 known as the "Fair and Accurate Credit Transactions Act of 2003" aka FACT! With broad support for renewing the expiring provisions of the existing FCRA (Fair Credit Reporting Act) legislation, FACT features a number of amendments which were passed by voice vote and are extremely consumer-friendly. The legislation is designed to extend some of the FCRA provisions which were to expire at the end of the year and to curb identity theft, improve the accuracy of credit reports and provide a feedback mechanism for consumers to clear up any credit misunderstandings and maintain an accurate credit report. Although some of the provisions will be costly for credit granting and reporting organizations, there is broad acceptance among consumer advocates.

Some of FACT’s key provisions include:

- **Free credit reports.** Each credit repository would be required to provide, on written request, one free credit report per year.
- **Credit score disclosure.** If the credit repository computes a credit score based upon data in their own database, they would be required to furnish this data along with an explanation of any negative factors which may impact your credit score. If you order your free credit report and forget to request your credit score, the credit repository must remind you that they compute the credit score and offer you a copy.
- **Creditor notification of negative items.** One of the novel provisions of this legislation is the requirement of a creditor to notify you, in writing,

when submitting a negative item to a credit repository. This would allow the consumer to correct a problem before it was added to the repository's database and disseminated to report requestors. The notification would have to be mailed or delivered electronically to you no later than 30 days after the creditor sends it to the bureaus.

- **Full identification of credit reporters and recipients.** Names, addresses and phone numbers of both credit reporters and report recipients would be listed on the credit report.

Class action lawyers who have targeted mortgage loan rate challenges due to erroneous credit reports and scoring models would be severely curtailed if the consumer is made aware of anything that might negatively impact their credit scores prior to applying for, or refinancing, a mortgage. According to some class action attorneys, the broker or lender who used the "poor credit excuse" to obtain a higher rate from the borrower that was also associated with a yield spread premium might still be a target.

While it is expected that FACT will pass the full committee and the House sometime in fall, there is no guarantee that some of the originally proposed restrictive amendments would not be reintroduced into the legislation. This might delay the bill's passage and present problems between the Committee and Full House versions and the reconciliation between the House and Senate versions.

It is also expected that the Federal Reserve Board will seek a period of comments before writing implementation guidelines for financial institutions.

COMPLIANCE NOTES

Effective Date: August 28, 2003

Missouri Late Charge Revision for Second Mortgages per Missouri Senate Bill 346 Section 408.140.1 (3) which reads: "(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or **fifteen** dollars, whichever is **greater, not to exceed fifty dollars**; except that, a minimum charge of ten dollars may be made. If the

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contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars." The bill's text can be accessed at

<http://www.senate.state.mo.us/03info/billtext/tat/sb346.htm>

OTHER NEWS OF NOTE

GUARANTEED MORTGAGE PACKAGES (GMP) IMPLEMENTED WITHOUT OFFICIAL HUD/RESPA SANCTION.

While Mel Martinez, Secretary of the Department of Housing and Urban Development (HUD) mulls over RESPA (Real Estate Settlement Procedures Act) reform, a number of brokers and lenders have decided to offer guaranteed mortgage packages as an industry "best practice."

Long rumored for publication in late fall, the RESPA legislation is expected to include some form of a two package option, one of which would be a guaranteed mortgage package.

The Mortgage Bankers Association of America, The National Association of Mortgage Brokers, RESPRO all seem to approve of the concept of the GMP while they continue to wrangle with HUD over other RESPA-related issues.

One sticking point is a safe harbor exemption from the current Section-8 anti-kickback rules, which might prevent a lender or broker from obtaining volume discounts or other consideration as part of package development. Some objectors point to the potential for abuse by large lenders or vendors of settlement services, which would severely impact smaller businesses.

Sometimes known as "Upfront Mortgage Brokers" (UMBs) or "Upfront Mortgage Lenders" (UMLs), some brokers and lenders have been seeking third-party "certification" of their package offers. Although little more than an advertising gimmick, this certification effort further assists in making consumers aware of the GMP. Somewhat similar to the "Good Housekeeping Seal of Approval" for Good Housekeeping's Magazine advertisers who pledged "total customer satisfaction." After all, it is the perception of open, honest fair dealing that counts.

One major difference between these voluntary efforts and HUD's "to be announced" official version is the matter of enforceability. There is no enforcement agency that can compel a broker or lender to actually deliver the GMP as it was originally presented to the consumer. With HUD, you deliver at settlement time or face severe penalties.

Another major issue involves the issue of rate locks. Does a GMP provide an automatic rate lock on the loan's interest rate as well as the cost of the settlement service package? In a combined system, the GMP may serve as a free rate lock for the period of the guarantee. In any event, the HUD legislation is needed to clarify such "open to interpretation" matters.

ICC READY TO RESPOND TO PACKAGE REQUIREMENTS...

No matter how the final regulation is implemented, ICC is currently able to support any packaging scheme you wish to put into practice. Our current system allows for the creation of custom packages including provisions for effective date range control and HUD-1 reporting options. Just ask Patrick for the details. You may e-mail him at patrick@iccdocs.com or call our toll-free number at (888) 437-3627.

OTS PARITY ACT EXEMPTION OF PREPAYMENT PENALTIES AND LATE FEES FROM PREEMPTION UPHeld BY COURT

OTS's limitation of The Alternative Mortgage Transaction Parity Act (AMTPA) that effectively preempts all state laws which restricts alternative mortgage transactions, such as adjustable-rate mortgages, has survived a legal challenge by The National Home Equity Mortgage Association. Judge Gladys Kessler upheld the OTS changes to the legislation which no longer allows state-chartered lenders to avoid compliance with state-imposed prepayment penalties and late fees. The OTS regulatory change which became effective on July 1st may still be appealed to a higher judicial authority. The position of the NHEMA is that Congress intended the legislation to preempt all covered Mortgage regulations and that the OTS's exemption of prepayment penalties and late fees is improper.

OTS PRE-EMPTS NEW JERSEY LAW

The Office of Thrift Supervision has added New Jersey's anti-predatory law to the list of preempted laws that also included Georgia and New York regulations. The sole purpose of the preemption is to let federally chartered thrifts avoid the state's restrictions on certain mortgage lending practices. According to James Gilleran, OTS Director, "Federal law authorizes OTS to provide federal savings associations with a uniform national regulatory environment for their lending operations."

HOUSE APPROPRIATION COMMITTEE DECLINES TO FUND FHA SUB-PRIME PROGRAM...

Citing the fundamental unfairness of subsidizing sub-prime borrowers, with their potentially higher loan default rates, over other premium-paying FHA borrowers, the administration declined to provide an additional \$37 billion dollars of financing for HUD's upcoming 2004 fiscal year to fund a proposed FHA Sub-prime insurance program. The House Appropriations committee also insured that the regular FHA program would not be shutdown on September 30th, at the end of their normal fiscal year, by approving an additional \$1.9 billion dollar supplemental appropriation. Programs for first-time buyers and those with impaired credit history are still on the HUD/FHA drawing board.

OCC TARGETS STATE PREDATORY LENDING REGULATIONS

The Comptroller of the Currency John D. Hawke, Jr. said today that many well-intentioned efforts to combat predatory lending may be having the unintended result of impeding the flow of credit to creditworthy sub-prime borrowers.

Among his comments:

- "In Georgia, New York, and New Jersey, for example, where particularly stringent anti-predatory laws are in effect, both Fannie Mae and Freddie Mac have drastically reduced or even eliminated altogether their purchase of so-called "high cost" and other real estate loans."
- "Moreover, the rating agencies have all adopted policies that make it very difficult to pool loans originating in Georgia, New York, or New Jer-

sey unless the issuer provides costly credit enhancements and/or certifications that the pool contains no proscribed loans.”

- “State laws have generally failed because they take an “across-the-board, one-size-fits-all approach that punishes the good as well as the wrongdoers.” “A far more effective approach would be to focus on the abusive practitioners and let federal regulators bring to bear their formidable enforcement powers where they find abusive practices among the institutions they supervise.
- “Our approach not only protects consumers where abusive practices are found, it also avoids the overbroad and unintended adverse effects of those one-size-fits-all laws – effects that, as we’ve seen, can be almost as harmful as the problem those laws were designed to address.”

RADIAN RE-FI LIEN PROTECTION PRODUCT BANNED IN CALIFORNIA ... BUT CONSUMERS WIN CONCESSIONS FROM TRADITIONAL TITLE INSURERS.

Even though California State Commissioner John Garamendi nixed Radian’s alternative title protection product, the resulting legislative and judicial challenges have resulted in lower title insurance costs for some consumers. Radian’s lien protection product (not a policy) would have resulted in the savings of hundreds of dollars, especially in the area of re-financed mortgages. Traditional title insurers rapidly responded to the Radian challenge by offering their own lower cost products. Reissue coverage, which potentially cost more than \$800, was offered by Radian in a limited exposure form that could be made available for approximately \$325. Traditional Insurers responded with a rate decrease, which potentially lowered the price of certain reissue coverage to approximately \$275.

While Garamendi upheld a previous court ruling against Radian, there are far-reaching discussions about the consumer’s cost/benefits of traditional title insurance products within his office. Additionally, there is some question of whether or not a consumer could easily obtain coverage at the lower rates offered by certain insurers in response to Radian’s in-

dustry incursion. Expect more from this politically-savvy politician ... and Radian.

TECHNOLOGY

DESKTOP POWER USERS DECLARED A MENACE BY IS DEPARTMENTS NATIONWIDE...

An informal study among the smaller mortgage firms using desktop computers has resulted in a not so surprising finding of, “We have met the enemy and he is us!” (From a Pogo quote) More damage was done to systems by so-called super-users trying to tweak their systems into performing better or by loading their computers with “unauthorized” software that compromised both the computer and the network than hackers and crackers. In some cases, these super-users offered to help their cubicle co-workers by “customizing” their systems too. The IS (Information Services) department claimed that this meant that individual backups would have to be performed on each machine rather than allowing for a single “authorized” version to be restored quickly. According to IS directors, the battle will continue to rage until the desktop computer is locked down to prevent settings changes and unauthorized programs.

THE THREAT FROM MUSIC...

Along with viruses and Trojan horses, the latest threat to computers may come from the music industry, which is rapidly trying to eliminate pirated music, and video downloads. In response to the many protection schemes used by the industry, the hackers and crackers are responding with un-protection schemes of their own. Unfortunately, these schemes can compromise network security and affect current production programs. This is especially true in P2P (Peer-to-Peer) file sharing schemes which do not limit their access to just music files, but may open the door to all files on the computer. While the industry has threatened to “blow up” offending computers with destructive software, it is proceeding with a number of lawsuits, which may be costly to defend. It is not worth getting a subpoena and all of the forensic computer work needed to identify the downloaders who may be using corporate computers and wideband networks to pursue illegal booty. A

solid policy and its enforcement seem to be the best cure at this time.

A BACKUP MAY NOT BE ENOUGH TO RECOVER FROM SYSTEM FAILURE...

Many people incorrectly believe that a backup performed with “industry quality” software will offer full and complete protection in the case of a disaster. While the backup can go a long way towards reloading software and data files, there are no provisions in today’s backup schemes which cover certain bios and hardware settings. It is suggested that you document your hardware and settings along with making periodic backups to provide a more adequate response to disaster situations.

PRIVACY & SECURITY

MORTGAGE BROKERS AND LENDERS BEWARE: AUGUST 25th -- FCC FAX REGULATIONS BECOME ACTIVE ...

Thirty days after they were first published in the Federal Register, the FCC’s new rules governing unsolicited faxes will go into effect. These rules will greatly affect the mortgage industry as they cover any unsolicited fax that contains *“any material advertising the commercial availability or quality of any property, goods, or services.”*

However, one unintended consequence with far reaching implications for such industry associations such as the Mortgage Bankers Association of America, American Bankers Association and others, arises from the fact that a critical language section dealing with prior “established business relationships” was altered. Therefore, membership in any association that also offers commercial products, goods or services may be not be sufficient enough to allow a fax to its membership that also contains advertisements for products or services... without first obtaining the recipient's prior written consent.

With the potential penalties for non-compliance ranging from \$500 to \$11,000 per unsolicited fax, lawyers are, once again, anticipating a windfall in settlement revenues. A judicial challenge to prevent the rule from being implemented or to modify its core language is already in the works.

FAILURE TO APPLY SECURITY PATCHES MAY LEAD TO LEGAL LIABILITY...

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Once again Microsoft, apparently two years into its security awareness initiative, recently released a number of new security patches. It is almost mandatory to apply these patches to avoid legal liability claim a number of legal experts. An item appearing in a newsletter published by Blanc, Rome LLP, a law firm specializing in security and privacy issues, states:

“FAILURE TO BLOCK COMPUTER WORM IS UNREASONABLE CARE

The Maine Public Utilities Commission has ruled that Verizon New England failed to act reasonably and prudently by not installing a patch designed to prevent the vulnerability exploited by the Slammer worm. As a result, the Maine PUC concluded that the losses at issue incurred in connection with the worm were not beyond Verizon's control. (June 11, 2003)” The item can be found at:

<http://www.blankrome.com/publications/privacy/enewsjune03-2.asp>.

BEWARE OF KEYLOGGERS...

There seems to be very little protection against computer programs known as “keyloggers.” These programs actually record each and every keystroke entered into a computer ... including user IDs, passwords, credit card numbers as well as other information. Sometimes used to “sniff out” unauthorized web use by internal auditors, these programs can quickly compromise a financial system. In a recent case involving a major photocopy chain, customers using their in-house terminals had their internet activity tracked and recorded. Posted signs urging the customers to protect their IDs and passwords were totally ineffective.

CONNECTIONS

REDUCING STRESS: GOVERNMENT POLICIES VS. REALITY

Many mortgage professionals still assume that regulations are derived from a dispassionate review of the underlying facts. To help reduce both confusion and stress, we now suggest that these professionals accept the fact that government policies may have

nothing to do with the underlying facts and everything to do with special interests and political posturing.

The clearest example of this type of legislation involves smokers. It is a scientific fact that smoking can statistically increase your chances of getting cancer. However, in the guise of “freedom of expression,” legislation is crafted that carefully disguises the fact that tobacco is a big moneymaker for agriculture, the manufacturers and the government (taxes). And the product is exportable to foreign areas not controlled by United States legislations.

The same can be said for mortgage legislation. First, the lawyers who create and administer mortgage legislation have no real interest in providing clear directives, which may be interpreted by the lay public without resort to the services of an attorney. And second, each representative or group wants to be able to craft legislation that they can sell during their reelection campaigns. It matters little that sufficient legislation is on the books, waiting to be enforced. It is having your name associated with the legislation that matters.

An example of the first case can be seen in the State of Texas; which wants to punish the consumer by tacking on another hundred dollars to each mortgage for an attorney to prepare or review mortgage documentation. It seems not to matter than the documents are created and vetted by attorneys and that document preparers are “filling in the blanks” and computing “standardized numerical values.” An example of the second can be seen in the confused and disjointed predatory lending legislation that attempts to protect the consumer from the “evil mortgage industry” rather than just going after the perpetrators of mortgage fraud or companies who turn false and misleading advertising into an art form. And, of course, the question of preemption becomes one of which group can claim credit for the accomplishment rather than provide an orderly method of facilitating commerce.

By viewing legislative bodies as “money machines,” with special interests throwing money at those *for* and *against* each issue, the underlying reality may be determined. Are there honest legislators? Yes, but after the first term, the sponsored legislation seems to mutate with tenure.

INTERESTING LINKS

Courtesy of the Mortgage Bankers Association... all you want to know about predatory lending can be found by clicking on the links below. (Note: You will need the free Adobe Acrobat reader to display these articles)

Predatory Lending – Reports and Studies [pdf]
http://www.mbaa.org/industry/reports/03/pledend_biblio0715a.pdf

Predatory Lending Reports, Studies and Law Review Articles State Bibliography [pdf]
http://www.mbaa.org/industry/reports/03/pledend_biblio0715b.pdf

Predatory Lending - Law Review Articles [pdf]
http://www.mbaa.org/industry/reports/03/pledend_biblio0715c.pdf

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

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