



**Money rates for end of month June, 2002 as reported in the Wall Street Journal**

Prime	4.75%
6 month Libor	1.95625%

**Federal Reserve Statistical release H.15 for June 15, 2002 (For Section 32 purpose)**

Treasury Securities	
5 Yr.	4.10%
10 Yr.	4.83%
15 Yr.	4.83%
20 yr.	5.54%

**JULY 1<sup>st</sup> – A MAGIC LEGISLATIVE DATE**

**ANNUAL GLBA COMPLIANCE NOTICES MAY BE DUE**

It has now been one year since the Gramm-Leach-Bliley Act came into mandatory compliance on July 1, 2001. Since this Act requires an annual disclosure (section 5 of the regulation), we suggest that you immediately review this requirement with your compliance department. In addition to ICC's GLB compliance notice on our website, we are fulfilling our obligatory annual notice requirement by including the GLB notice at the end of our newsletter which is circulated to all of our clients. Please note: "annually" is defined as being "at least once in any period of 12 consecutive months in which the relationship exists."

**CALIFORNIA "COVERED LOAN" PROVISIONS**

ICC will start implementing the California Covered Loan Prepayment Penalty Disclosure per California Financial Code sections 4970 and 4973. **Please remember: this disclosure must be delivered three days prior to the signing of loan documents.**

A "covered loan," for the purposes of this statute is a consumer loan that does not exceed \$250,000 and which has an annual percentage rate, at consummation of the transaction, which exceeds by more than 8% the yield on treasury securities having comparable periods of maturity on the 15<sup>th</sup> day of the month immediately preceding the month in which the application is received or total points and

fees payable by the consumer which exceed 6% of the total loan amount.

Another reminder: the current points and fees as defined include all charges defined as finance charges under the Truth in Lending Act. **This definition will change on 10/01/02.**

This legislation is part of California's Anti-Predatory Lending efforts.

**Florida's Fair Lending Act becomes effective on October 2, 2002 so ICC recommends a detailed review of that legislation.**

**NORTH CAROLINA DISCLOSURE FORM BECOMES MANDATORY**

ICC has implemented the "Notice of Information and Examples of Amortization of Home Loans" form which contains examples of amortization charts. Lori Lytle in ICC's compliance/forms department wants to remind everyone of the conditions of delivery. **"The lender must deliver or mail this Notice to the consumer within three business days after the lender receives the consumer's loan application or the date of the loan closing whichever is earlier."**

In addition, modifications to NC security instruments and assignments must be made to insure compliance with new recording requirements which, in some cases, NC recorders require the document title to be the first word/item on the top of the form. Non-compliance may subject the person recording the document to a "non-compliant" document fee ranging up to \$25. In some instances of non-compliant forms, the return address information and/or loan information appears before the title of the document.

**NC is on a roll...** as they have finally enacted a mortgage lending licensing act to regulate mortgage brokers and bankers. It is to be noted that this registration process, common in many parts of the country, is guaranteed to precede a major battle on licensing involving not only mortgage brokers/bankers, but also Realtors, traditional bankers and insurance agents ... all of whom may be offer-

ing cross-industry services as per the repeal of the Glass-Steagle act.

## **CALIFORNIA RESTRICTS SSN DISCLOSURE**

In an effort to curb identity fraud, California has passed a law banning the use of Social Security Numbers for anything except internal administrative functions or other uses required by law. This is bound to have an effect on those organizations who use the SSN as a personal identifier which is routinely placed on documents mailed to the consumer as the laws specifically prohibit businesses such as banks, insurance companies and others who routinely include the SSN as part of their correspondence with their customers. Even more stringent regulations are to be phased in over the next three years as health-care companies will be prevented from using the SSN on ID cards and accounts. Congressional bills (HR 2036 and S1014) have been introduced to make significant changes in requirements to use and access the social security number. It is assumed that the credit repositories are seeking a safe-harbor exemption, which would allow the SSN to be included in routine credit reports, which are displayed in web browsers.

## **STAY TUNED TO THE FEDERAL REGISTER NEWS ... MEL MARTINEZ RESPA REFORM PROPOSAL GOES TO OMB**

The Office of Management and Budget (OMB) is completing its review of HUD's proposal. After the proposal is approved by OMB and provided to Congress for a 15-day prepublication period, the proposal will be published in the Federal Register and made available for public comment for 90 days. This is the long awaited "*summer*" **RESPA/TIL reform package**, which features:

- **EARLY DISCLOSURE**
- **A MORE ACCURATE GFE,**
- **"FIRM" CLOSING COSTS,**
- **A HOST OF CONSUMER REMEDIES SHOULD THE BROKER OR LENDER MAKE AN ERROR**
- **ENHANCED REGULATORY ENFORCEMENT.**

Offered as a "homebuyer bill of rights," the proposed legislation is founded on a set of consumer-driven principles that, according to HUD, would guide the settlement process. These principles mandate that homebuyers have the right:

- To receive settlement cost information early in the process, allowing them to shop for the mortgage product and settlement services that best meet their needs;

- To have the disclosed costs be as firm as possible, thereby avoiding surprises at settlement;
- To benefit from new products, competition and technological innovations that could lower settlement costs;
- To have access to better borrower education and simplified disclosure; and,
- To know they are protected through vigorous RESPA enforcement and a level playing field for all industry providers.

### ***To meet these principles, HUD would reform the home buying process by:***

- Changing the way lender payments to brokers are recorded and reported to consumers;
- Significantly improving HUD's Good Faith Estimate settlement cost disclosure; and,
- Removing regulatory barriers to allow market forces and increased competition to promote greater choice for consumers by allowing guaranteed packages or "bundling" of settlement services and mortgage loans.

### ***Revisiting the YSP... More Choice Through Disclosure***

In order to create a more "transparent" settlement process, HUD's proposal to facilitate consumers' understanding of the true costs of their mortgage fundamentally changes the way lender payments to mortgage brokers - yield spread premiums - are recorded and reported to consumers. According to Martinez, more information on how brokers are compensated and how lender payments can help lower settlement costs will allow for better consumer choices.

### ***Removing Regulatory Barriers to Bundled Services***

HUD's opinion that the 1974 RESPA legislation has impeded the offering of "guaranteed packages" of settlement services would now be addressed. The proposal would remove regulatory barriers to allow guaranteed mortgage loan packages that will provide more choices for consumers shopping for their mortgages.

## **MEL HAS LOTS OF COMPANY...**

Congressman Bob Ney (R-OH) announced his plan to introduce further legislation addressing predatory lending and later this year to begin work on more comprehensive (RESPA) mortgage reform. Currently nine Federal agencies, Banking Committee Chairman Paul Sarbanes and other Members of Congress are racing the states in defining and protecting against so-called "predatory lending." And even now, there is a lack of consensus on a uniform definition. The result is a compliance nightmare.

According to Representative Ney, "RESPA reform must include four principal objectives:

1. to streamline and simplify the disclosures provided to borrowers so that they will have better and more certain information with which to make wise credit choices;
2. to lower settlement costs by removing the regulatory barriers that insulate these costs from the effects of market competition;
3. to reduce abusive lending practices, and;
4. to ease the burden of compliance by adding much-needed certainty into RESPA's and other regulatory requirements, which should reduce the continual onslaught of class action litigation that is spawned by ambiguous rules."

It is hoped that whatever legislation is developed, that it include provisions similar to the Parity Act which allows lenders to adopt Federal standards in place of a patchwork quilt of predatory-lending, document and recording requirements which are stifling the industry. We can only hope that our trade associations will protect the industry from publicity-inspired legislation from some of the more muddled members of Congress.

## **MBA NIXES ASSENT for Alternative Mortgage Transaction Parity Act changes...**

In a letter to the OTS, the MBA has objected to scrapping the preemption privileges under the Parity Act saying it would act as a burden on those who want to offer alternative mortgage products. Claiming that it will hurt the consumer, reduce market competition, complicate compliance and raise the cost of mortgages, they point out that enacting changes will do nothing to curb the abuse and fraud within the industry. The Act's original intention of providing parity between federally-chartered and non-federally chartered institutions to level the lending playing field is often being applied to exempt lenders from complying with state regulations in fa-

vor of adopting and complying with federal regulations.

## **CONVERGENCE OF TECHNOLOGY STANDARDS...**

Everyone wants to define the standards ... The Mortgage Bankers Association, in the form of MISMO, and others with a vested interest in the mortgage process are all struggling to promulgate standards which would benefit their constituencies in allowing for end-to-end workflow enhancements which would ultimately simplify their internal processes and result in lowered costs. Unfortunately, the battle between the legal faction, the recording faction, the mortgage faction are all leading to the definition of the same data with a number of different data descriptors. I predict that confusion and chaos will abound unless these separate standards entities start talking with each other on a more regular basis.

## **HUD & THE YSP**

A recent District court case in the Northern District of Illinois, *Watson v. CBSK Financial Group*, ruled that the FHA 1% cap on mortgage loan origination fees *DOES NOT* apply to a YSP paid by a lender to a correspondent as these fees do not have to be aggregated with the origination fee. For now, this only applies to a single jurisdiction and does not serve as a precedent for other districts.

## **FEE MARKUPS MAY NOT BE A RESPA VIOLATION...**

In another court decision, the Fourth Circuit court decided that RESPA does not specifically control markups on services provided by third parties. In *Boulware v. Crossland Mortgage Corp.* the court sided with the lender and ruled that Section 8 of RESPA does not prevent a lender from unilaterally deciding to markup the cost of third-party charges. The court rendered its opinion following the precedent of the *Echevarria* case in the Seventh Circuit and stating that the statute "was clear on its face and that HUD did not have the authority to read more into the statute than Congress had written."

## **U.S. PATRIOT ACT... KNOW YOUR BORROWER & WATCH THEIR SOURCE OF FUNDS...**

It seems that it is only a matter of time until Mortgage Brokers/Bankers will be required to better identify borrowers and to report any unusual funds transactions much the way banks routinely report transactions over a trigger amount. While not a popular practice, it is conceivable that funds can be laundered in mortgage transactions and money may

be moved throughout various localities by using liquid real estate as a transmission vehicle. In the case of so-called "long-term sleeper" agents, the value in a property could be turned into operational funds within a reasonable amount of time. Good citizen broker-bankers should contact their local FBI office with notice of any suspicious activity that they observe. There is no formal method or requirement at this time for passing along suspicious information. Remember: you may lose a fee or commission, but you preserve the American way of life and your future ability to live and work in the best country in the world.

### **TECHNICAL HINT: DIAL-UP/MODEM SERVICES IMPACTED BY TELCOs TRYING TO EKE MORE MONEY OUT OF SERVICES...**

Local telephone companies are adding advisory messages that are played prior to issuing a clean hang-up signal. In some instances, busy signals are preceded with messages touting fee-for-service recall features or lengthening the dial-tone return time to allow for conference calling and other switching features. For those customers using modems to communicate directly with dial-up service providers or internet service providers, it is suggested that they contact their local telephone service provider to insure that call-waiting and other optional features are turned off. In some instances, a knowledgeable person should increase the modem re-dial time to avoid a never-ending loop of messages.

### **GSE's COME UNDER FIRE AGAIN...**

It is unknown at this time how major news events such as the deficit in other GSE's such as the U.S. Postal Service and AMTRAK, as well as the well-publicized shenanigans of Arthur Andersen, Enron, Worldcom, Global Crossings and others, will effect Fannie and Freddie. Congress is about to hold hearings on setting requirements that would demand that Freddie and Fannie adhere to the same reporting requirements as other public companies. In light of what recently happened, it seems that the government should redefine both the SEC and the accounting industry's so-called "Generally Accepted Accounting Principles" before embarking on a witch-hunt of epic proportions.

### **DEATH TO SUBPRIME LENDING**

Since very few legislators understand the statistical basis of risk management and view with trepidation the seeming fraud and abuses that are causing agony for their constituents, it is easy to turn the issue of so-called "predatory lending" into sanctions which may cripple the sub-prime mortgage market. Since

June of 2000 more and more political-ized agencies and publicity-hungry legislators are busy thinking of ways to implement mortgage lending curbs such as:

- Increased Consumer Counseling;
- Prohibitions on refinancing loans without a "tangible net benefit" to the consumer as demonstrated by a net 2% decrease in the APR or the lender charges no points or fees and the APR does not increase or the fees do not exceed a cap percentage (3% is often mentioned) or the loan increases by at least 20% and the fees are levied only on the new amount and do not exceed 3% of that amount;
- Borrowers would lose the option to finance points and fees;
- Yield Spread Premiums would be totally eliminated;
- Prohibition of selling insurance in connection with mortgage loans (single-premium insurance of any kind);
- Prohibit mandatory arbitration on high-cost loans;
- Restrict balloon payments on high-cost loans
- Capacity to repay a loan would be formulized and be presented as part of the pre-qualification screening.

Plus a host of other curbs, restrictions and sanctions. It is up to each broker/banker to make their voice heard by writing legislators who propose over-burdensome requirements on the industry. At the very least, donate time or money to your local trade association.

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