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NEWSLETTER

Money rates for end of month March 2002 as reported in the Wall Street Journal

Prime	4.75%
6 month Libor	2.3300%

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

	Treasury Securities
5 Yr.	4.80%
10 Yr.	5.35%
15 Yr.	5.35%
20 Yr.	5.98%
25 years or more	5.93%

What do I do when...

A new feature appearing in the ICC newsletter, "WHAT do I do when..."

The Payments showing on the TIL are "360 at \$\$\$" and the loan is an ARM. This happens when the following circumstances occur on your ARM loan; **the rounded fully indexed rate and the initial note rate are the same.**

People ordering documents are told that the payment stream must show steps e.g. 6@ and 354@ or 12@ and 348@, thus the call is made to ICC to say the payment stream lacks steps and we explain the above scenario to them.

YSP: LATEST TWISTS & TURNS...

With the words, "We reject the analysis in Culpepper, and while it remains the law in the Eleventh Circuit, we choose a different conclusion, giving due deference to HUD's interpretation of its regulation," the Eighth Circuit Court of Appeals put forth a conclusion which has spawned hope within the lending community, anxious to avoid the payment of what could potentially be millions of dollars in penalties, in that quagmire named "yield spread premium."

The Conclusion of the Court is as follows:

"We accept the loan-specific liability test promulgated by HUD, which recognizes that YSP's may be used as a way to finance closing costs. Accordingly a loan-specific analysis is required in determining whether the payment of

an YSP is based upon services rendered or an illegal referral. We do not surmise that the payment of an YSP will pass muster in each instance, or even in this case. We further emphasize that our opinion in no way prohibits individual plaintiffs from pursuing their valid claims under RESPA. As noted, Congress, in its wisdom, fosters the guarantee of legal representation under RESPA on an individual basis by allowing for attorneys fees and costs as part of the prescribed recovery. Our only conclusion today is that the determination must be made on a loan-by-loan basis. Class certification being impracticable, the judgment of the district court is reversed. We remand for further action consistent with this opinion."

Thus, in essence, the court denies class certification saying, in a summary, that the "District Court abused its discretion in certifying a nationwide class defined as all individuals who obtained a mortgage financed by defendant and brokered by any mortgage broker." The "question whether payment of a yield spread premium violates the Real Estate Settlement Procedures Act requires a loan-specific analysis to determine whether the payment is based upon services or an illegal referral."

Lonnie Glover v. Standard Fed. Bank Case Number 00-3611.

IT'S NOT OVER TILL THE FAT LADY SINGS...

Even though the decision is being hailed as a great victory for lenders as evidenced by the headline in the MBA weekly publication, Real Estate Finance Today, "**COURT HANDS LENDERS 'MONSTROUS' YSP VICTORY**," the matter is still unsettled and this ruling is added to the pile of YSP litigation.

As noted in The American Banker, after the U.S. Court of Appeals for the Eleventh District granted the Culpepper class-action status last summer, HUD issued a policy statement in November saying that the appellate court had not followed HUD's long standing test.

It was then hoped that an industry initiative to have the U.S. Supreme Court review the class certification matter would grant some measure of relief to

the lenders who were being exposed to massive potential liability. The Supreme Court refused to grant certiorari, refusing to hear the case. According to Leonard Bernstein, a partner with Reed Smith LLP as quoted in The American Banker, he was “disappointed but not surprised” that the Court refused to take the Culpepper case, noting that only one circuit court has ruled on it. He further added, “The Supreme Court usually won’t take a case unless there is a conflict among the Circuit Courts of Appeal.”

Considering that there is an appellate ruling in the Eighth and Eleventh Circuit Courts and litigation in the Ninth Circuit Court, it seems that a Supreme Court case may be likely in the next year.

YSP: SEVEN WILD CARDS...

Regardless of judicial rulings, there are a few additional YSP-influencing wild cards to consider.

First, there is Mel Martinez, erstwhile head of HUD who is working hard to revamp RESPA and may provide new disclosures, definitions and guidance in the YSP matter.

Second, there is legislation proposed by Senate Banking Committee chairman Paul Sarbanes, (D-Md) and U.S. Rep. John J. LaFalce (D-NY), Ranking Member of the Committee on Banking and Financial Services to curb lending abuses which may include special treatment of YSP disclosures.

Third, there is the recent “Class Action Fairness Act” recently passed by the House of Representatives, which would allow most class actions to be heard in Federal Court rather than State Courts with the intention of keeping class-action attorneys from “forum shopping” for sympathetic class-action judges. While the bill could forestall additional YSP-related suits, it remains stalled in the Senate Judiciary Committee.

Fourth, there is the possibility that additional YSP suits could use the RICO (Racketeer Influenced and Corrupt Organizations Act) to allege an egregious pattern of conduct, which would force some form of de facto class certification.

Fifth, there are rumors of legislation that would also make the ultimate provider of funds guilty for the YSP-related acts of individual mortgage brokers. While we believe this is misguided, it may be an attorney’s attempt to seek deeper pockets and to have larger lenders settle out-of-court.

Sixth, there is a trend towards making arbitration mandatory on a case-by-case basis, which would eliminate the possibility of class-action lawsuits unless there was a pattern or practice of criminality.

And seventh, there is always the possibility that a defendant may plead guilty to a single YSP violation and end the matter with a small penalty and a larger “demonstrative fine” by some governmental agency.

And ICC’s practical solution...

ALWAYS INCLUDE AN “ERRORS AND OMISSIONS” DOCUMENT IN YOUR DOCUMENT PACKAGE. This document will provide for the recognition of interpretation problems, occasional clerical mistakes and allow a cost-effective resolution. This document is normally used when there is some error in a document set, but there is no law that says it can’t be extended to protect against other types of problems. ICC’s policy is that, “IT’S YOUR DOCUMENT SET” and ICC is willing to program any form or disclosure you wish at no charge and place it anywhere in the document set you desire.

PREDATORY LENDING WATCH...

The desire for lenders to curtail local governments from passing their own predatory lending rules, and thus further complicating the compliance scene, was given a new forum. House Bill 386, which would prohibit local governments from passing laws dealing with predatory lending. Unfortunately some see the bill as being anti-consumer and pro “loan shark” as noted in the Cleveland Plain Dealer. Meanwhile the local regulators continue with multiple definitions of predatory lending.

ANTHYPE SEGMENT: WEB SERVICES...

ICC has been asked if its web-resident document preparation system, including web data entry and web package delivery is a “web service.” Technically, the answer is no. Web services are defined as “software programs that interact with other software programs over some communications medium or protocol.” The quick test: if human input is required, it is not a web service, but a service offered over the web.

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