

If you would like to be updated on important legislation and other developments that occur between issues of our quarterly newsletter, PLEASE SEND AN E-MAIL WITH YOUR E-MAIL ADDRESS TO: [cdiresta@franzen-salzano.com](mailto:cdiresta@franzen-salzano.com), and we will send you periodic updates as events warrant.

**W**elcome to the twelfth issue of our quarterly newsletter. Your comments are encouraged.

## HOEPA CHANGES ADOPTED BY FED

In December, the Federal Reserve Board adopted changes to Regulation Z which implements the Home Ownership and Equity Protection Act ("HOEPA"). Compliance with the revised regulations is mandatory beginning **October 1, 2002**.

The changes lower HOEPA/Section 32's rate-based trigger for first mortgage loans to 8% (from 10%) over the applicable Treasury Security yield, with no change for subordinate loans. The "points and fees" calculation is amended to include certain credit insurance products. The new provisions also contain additional restrictions for HOEPA loans.

## TERRORISM AND LOANS

The Office of Foreign Assets Control ("OFAC"), an arm of the Department of Treasury, administers a law requiring financial institutions, lenders and brokers to monitor all loan transactions to determine involvement by any designated "bad actors," such as terrorists. OFAC publishes a list of "specially designated nationals and blocked persons," which may be found at [www.treas.gov/ofac](http://www.treas.gov/ofac).

## SUPREME COURT REFUSES TO HEAR CULPEPPER CASE

The U.S. Supreme Court has denied Irwin Mortgage's request to hear the case of *Culpepper v. Irwin Mortgage* in which the Eleventh Circuit Court of Appeals granted class certification on the issue of yield spread premiums.

## HUD PROPOSED ANTI-FLIPPING RULE

HUD has proposed a rule intended to restrict the practice of "flipping" FHA loans whereby an investor purchases a home, makes minor cosmetic changes and quickly resells the home at a drastically higher price. If adopted, the rule would limit financing properties owned for less than 6 months. As of press time, the proposed rule was still pending, but the period for public comment had expired.

## LENDER BEWARE

We are aware of a number of lenders battling problems because they did not perform background checks on their employees or those with whom they do business. The industry is well aware of the need to perform the usual background investigation on employees. We also recommend that you perform these investigations in connection with your contract employees and other lenders, brokers and investors involved in your loans.

## STATES IN BRIEF

**GEORGIA**— Effective October 25, 2001, the Georgia Department of Banking adopted new Residential Mortgage Act rules concerning the "per loan" fee form and requirements, as well as record keeping and bond requirements.

## "TALKING THE TALK"

Terry Franzén will address the American Conference Institute in **April** in San Diego regarding the "State of Local Ordinances Against Predatory Lending."



*Continued from front*

**ATLANTA AND DEKALB COUNTY, GEORGIA**— In a lawsuit brought by the American Financial Services Association (“AFSA”) against DeKalb County, Georgia, the Superior Court has entered a permanent injunction prohibiting the enforcement of the DeKalb County predatory lending ordinance. The DeKalb County Superior Court found that the ordinance was preempted by state law and regulations. DeKalb County has appealed the ruling to the Georgia Supreme Court. The Supreme Court is expected to hear the case in March. In a separate lawsuit, AFSA has won a temporary injunction prohibiting the enforcement of the Atlanta predatory lending ordinance, pending the outcome of the appeal by DeKalb County.

**DISTRICT OF COLUMBIA**— The District of Columbia City Council approved a 60-day moratorium on the enforcement of the D.C. predatory lending law which was effective Tuesday, November 27, 2001. Substitute legislation is being considered.

**FLORIDA**— The Florida Department of Banking and Finance has adopted new regulations relative to the education requirements under the Mortgage Brokerage and Mortgage Lending Act.

**ILLINOIS**— The Illinois Association of Mortgage Bankers (“IAMB”) brought a suit in which it alleged that the Alternative Mortgage Transaction Parity Act (“AMPTA”) preempts the high cost loan regulations issued by the Illinois Office of Banks and Real Estate (“OBRE”). In December, the district court held that

AMTPA does not preempt the OBRE’s high cost loan regulations. Therefore, lenders making high cost loans in Illinois must comply with the OBRE’s limitation on charging prepayment penalties in connection with such loans and should not rely upon AMTPA to charge a penalty in a greater amount or after a longer period of time. The IAMB is expected to appeal the decision.

**NORTH CAROLINA**— Effective January 1, 2002, North Carolina revised its Good Funds Settlement Act.

North Carolina also has adopted an amortization schedule disclosure requirement, with a delayed effective date of July 1, 2002. North Carolina’s new Mortgage Lending Act is, for the most part, also effective July 1, 2002, and replaces the prior mortgage licensing law with more stringent requirements.

**OHIO**— Ohio made significant revisions to the Mortgage Brokers law which are effective on May 2, 2002. Ohio has eliminated the requirement that deeds, mortgages, and other recordable instruments relating to real property, such as powers of attorney, releases, and assignments, be attested in the presence of two witnesses.

**TEXAS**— Texas adopted a new regulation that requires licensed brokers to make certain disclosures to borrowers.

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***Publisher’s Note:***

*Points of Interest* is published by Franzén and Salzano, P.C. for clients and colleagues in the lending industry and should not be construed as legal advice. The contents are for general information purposes only. You are urged to consult legal counsel concerning any specific situation or legal issue.

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