BEFORE THE INSURANCE COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of:	)	File No. SF 15404-A
	)	OAH No. N2002070670
Radian Guaranty, Inc., et al.	)	
	)	
Respondents.	)	
	)	

BRIEF OF AMICI CURIAE

CENTER FOR PUBLIC INTEREST LAW

CONSUMER FEDERATION OF AMERICA

CALIFORNIA CONGRESS OF SENIORS

UNITED POLICYHOLDERS

LEAGUE OF CALIFORNIA HOMEOWNERS

Brief of Amici Curiae

Pursuant to the Notice and Order issued by the Insurance Commissioner on May 20, 2003, the Center for Public Interest Law, Consumer Federation of America, California Congress of Seniors, United Policyholders, and League of California Homeowners, *Amici Curiae* (hereafter "*Amici*") submit the following brief. A description of *Amici* and their interests in this proceeding are attached as Exhibit I. In submitting this brief, *Amici* do not endorse any particular insurance provider or product.

I. The Insurance Commissioner Must Ensure That The Title Insurance Industry Is Subject to Competition.

Because of low interest rates, record levels of consumers are refinancing their home mortgages. As rates drop, many consumers are refinancing multiple times. Each time they do, consumers pay hundreds of dollars for title insurance. Recent surveys show that major title companies are quoting prices averaging $750 for a $250,000 refinancing in California.[1]

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[1] In apparent response to public criticism of high title insurance rates and the industry's effort to prevent the entry of new competitors, title insurers have announced the introduction of new, cheaper policies. However, on closer examination, it seems that these policies are not widely available. Earlier this year, the title industry announced that it was offering a new low-cost policy that would cut premiums to as low as $275 for a refinancing. California Regulators Approve Reductions in Title Insurance Costs, *Mortgage Servicing News*, March 2003, p. 30. However, a survey conducted by Consumers Union found none of the major title companies quoting rates even approaching this level. Recently, Fidelity National announced that it would offer a Lien Protection Policy "with pricing as low as $275 per transaction." FNF Announces Filing of Master-Lien Protection Policy and Introduction of Refinance Rate Calculator, News Release, May 30, 2003. However, Fidelity's low-cost product is limited to lenders who do "not intend to sell loans into the secondary market." Since the vast majority of lenders either sell their loans into the secondary market or preserve the option to do so, the new product will be of almost no help to consumers.

II. Title Insurance Is A Highly Concentrated Industry in California.

One reason that title insurance rates are so high is that title insurance is a highly concentrated industry. In California, five large firms and their subsidiaries control over 88% of the market. The two largest firms control over 60% of the California market.[2]

Claims are rare against title insurance policies. About 3 to 5 cents of every premium dollar consumers paid for title insurance goes to paying claims.[3] (In contrast, property/casualty insurers spend 68 cents of every dollar on claims and homeowners insurers spend about 60 cents of every dollar on claims.[4]) The rest goes for operating expenses, commissions, marketing and profit. In recent weeks, large title companies reported record revenues and profits for the first quarter of 2003, breaking previous records established only last year.[5] A large portion of these revenues and profits come from California consumers.[6]

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[2] American Land Title Association, State-By-State Market Share Report 2001, California 2001, attached as Exhibit II.

[3] Fitch Ratings, *Special Report, U.S. Title Insurance, Review and Outlook:2002-2003*, January 2003, p. 7.

[4] A.M. Best Co., Best Review/Preview, Property/Casualty Edition, January 2003, p. 18.

[5] See, for example, "Fidelity National Financial, Inc. Reports First Quarter 2003 EPS of $1.44" (reporting net earnings of $144 million for 2003 compared to $101 million, a 40% increase; "First American Corp. Reports Record Results for the First Quarter 2003," April 23, 2003, ("Pretax income was a record $95.0 million, an increase of 92 percent when compared with $49.6 million in the prior year quarter."); "Stewart Shatters First Quarter Revenues, Earnings, and Earnings Per Share and Sets All Time High Order Count," April 25, 2003; "Old Republic Announces Record Quarterly Operating Earnings," April 24, 2003.

[6] Recently the increase in title insurance revenues from California from 2001 to 2002 was described as "breathtaking." In particular,

> "California, already the state that consistently yields the highest revenues for title insurers, saw premiums written jump 35.2%, that's an increase of $664 million. ***That increase is more than 54 of the 57 jurisdictions produce in total premiums.***"

So far, in 2003, publicly held title companies have reported further revenue increases averaging 30 percent. 2002 Title Industry Snapshot: Year-to-Year Comparisons "Breathtaking;" Operating Expenses Down; 1Q Promising As Well, *The Title Report*, May 19, 2003 (*emphasis added*).

III. The Title Insurance Industry Has a Long History of Anti-Competitive Practices.

Another reason for high title insurance rates is that the title insurance industry has a long history of anti-competitive practices. These practices include paying illegal kickbacks to brokers and agents who steer business their way. This is known as "reverse competition" because it drives up prices for consumers. Rather than doing business with title insurers charging the lowest prices, consumers are steered to title companies paying the biggest kickbacks. Ultimately, consumers pay the cost of kickbacks in the form of higher fees for title insurance. In California, title companies have paid millions of dollars to settle enforcement actions brought by the Department of Insurance to halt illegal kickbacks.[7]

Title insurance companies have also sought to block the entry of new competitors especially those offering alternative products that are less expensive than traditional title policies. For example, in Virginia, title insurers sued to stop Norwest Corp. (then the 12th largest commercial bank in the country) from offering a product that would save consumers 10% off the price of regular title insurance.[8] While Norwest's alternative product was allowed in Virginia, title insurers blocked the product in other

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[7] California Department of Insurance Announces $1 Million fine Against Old Republic, Department of Insurance, Press Release, December 13, 2001; California Insurance Commissioner Harry W. Low Announces $2 Million Settlement Against Southland Title Companies, Press Release, Department of Insurance, April 26, 2002; Despite Fine, Insurers Likely to Keep Giving Kickbacks; Title Insurance Companies Giving Gifts to Real Estate Companies, *Los Angles Business Journal*, November 1, 1999, p. 8 (describing a $2.5 million fine against First American Title Co. stating "In the case of First American, the kickbacks took the form of trips to Las Vegas, ski trips to Utah and tickets to concerts and sporting events.").

[8] Norwest's product (Title Options Plus) involved a title condition report listing all liens and encumbrances and, if the report was satisfactory to Norwest, the bank would not require the consumer to buy a traditional title policy. *Lawyers Title Insurance Corp. v. Norwest Corp.*, 254 Va. 388, 493 S.E.2d 114, 1997 Va. LEXIS 125 (1997) and Title Option Plus Is Not "Insurance" Under Virginia Law, 16 *Journal of Insurance Regulation*, Spring 1998, pp. 367-368.

states. In Tennessee, title insurers have sued the State Banking Superintendent to prevent banks from selling title insurance.[9] Through its trade associations, the title insurance industry is engaged in a nationwide campaign to prevent the introduction of lower cost alternatives to traditional title insurance.[10]

IV. With Falling Interest Rates, Record Levels of Consumers Are Refinancing Their Home Mortgages Costing Consumers Millions of Dollars in Excess Premiums for Title Insurance.

In recent weeks, with interest rates falling to levels not seen since the early 1950s, lenders are reporting record levels of refinancing activity. The Mortgage Bankers Association (MBA) reported that its Refinance Index for the week ending May 30, 2003 increased to a record high of 9977.8 breaking the previous record of 9387 set in March 2003 (*New Records Abound in Latest MBA Applications Survey*, News Release, Mortgage Bankers Association, June 4, 2003).[11]

The unprecedented level of refinancing activity has caused lenders to sharply revise their forecasts for 2003. Recently, MBA announced that is now forecasting over $3.34 trillion in home mortgage originations obliterating last year's record-setting mortgage origination volume by more than $850 billion dollars. Sixty eight percent or $2.27 trillion of this will be for home mortgage refinancing. MBA Mortgage Finance Forecast, June 13, 2003, attached as Exhibit III.

Others in the mortgage industry are forecasting even higher levels of refinancing. Currently, Fannie Mae is projecting a record $3.7 million in mortgage originations in 2003. Like MBA, Fannie Mae expects that a majority of these mortgages will be

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[9] Banks Sale of Title Insurance Challenged, *The Tennessean*, January 7, 2003, p. 1E.

[10] Title Industry Beefs Up Legal Muscle to Stop Alternative Title Products, *The Legal Description*, October 29, 2001.

[11] The MBA Index is a widely looked to barometer of consumer mortgage activity. The index covers approximately 40 percent of all U.S. retail residential mortgage originations and has been conducted on a weekly basis since 1990. The base period for the index is March 16, 1990.

refinances. At current interest rates, the number of consumers expected to refinance and others who could potentially benefit from refinancing is simply staggering. According to the Chief Economist for Fannie Mae,

> "Fannie Mae's Mortgage Market Analysis Department estimates that with primary market fixed-rate mortgage yields around 5.30 percent, ***about 90 percent of all fixed-rate mortgages outstanding are "in the money" to refinance. We project a rise in refinance originations of 61 percent to an astounding $2.59 trillion. This by itself is almost as large as last year's total origination figure."***[12]

V. The Insurance Commissioner Must Increase the Level of Competition in the Title Insurance Industry.

Amici urge that you do everything possible to lower the cost of refinancing by increasing competition in the title insurance industry. Lowering the cost of refinancing is extremely important to consumers, local communities and the state of California.

Refinancing is especially important for seniors many of whom live on low or fixed-incomes. Saving a hundred or two hundred dollars a month in mortgage payments is a huge help, especially when income from certificates of deposits, savings accounts, money-market funds and other interest-bearing assets held by seniors has also dropped significantly.

Refinancing is also important for low and moderate-income consumers. Studies show that low and moderate-income homeowners are more likely to own older homes that entail larger maintenance expenses.[13] By using cash from refinancing their home mortgages to modernize their homes, they can improve their comfort and safety, reduce their energy and maintenance costs and protect the value of what is typically their single

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[12] A New Record for Mortgage Market Volumes, David W. Berson, Chief Economist Fannie Mae, Economic Commentary, June 2, 2003 (*emphasis added*).

[13] The Economic Benefits and Costs of Homeownership: A Critical Assessment of the Research, Research Institute for Housing America, Working Paper No. 01-02, May 2002, p. 17.

largest asset. Refinancing also enables families who need more living space (e.g., for an additional child or an elderly parent) to add-on to their current homes, instead of moving to larger homes. Also, with rates for fixed rate mortgages below 6%, it often makes economic sense to refinance instead of financing purchases with other types of loans at higher interest rates—e.g., credit cards (13-24%), personal unsecured loans (13%) personal secured loan (10.5%) small business loan (6-7% adjustable)---especially when the deductibility of mortgage interest is taken into account.

Reducing the cost of refinancing is also important to the local, state and national economy. Freddie Mac estimates that refinancing saves homeowners more than $110 a month on average which in aggregate adds up to about $300 million per month in additional funds for those homeowners to put back into the economy.[14] In addition to these monthly savings, homeowners are expected to raise $120 to $130 billion this year through cash-out refinancings about one-half of which will be spent this year.[15] (A study by Economy.com estimates that in 2001 and 2002, California homeowners raised over $58 billion through cash-out refinancings including $13.4 billion in Los Angeles, $5.4 billion in Oakland, $6.4 billion in Orange County, $2.8 billion in Riverside, $2.0 billion in Sacramento, $4.9 billion in San Francisco and $4.7 billion in San Jose.[16]) Much of these funds are spent in local communities injecting additional billions of dollars into the economy when they are seriously needed.[17]

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[14] Low Interest Rates Continue to Fuel Refinancing According to Freddie Mac Review, News Release April 30, 2003, at http://www.freddiemac.com/news/archives/rates/2003/1qupb03.html.

[15] Cash Raised From Cash-Out Refinancing in 2003 Should Rival Last Year's Record, David W. Berson, Chief Economist Fannie Mae, Economic Commentary, June 16, 2003, p. 1, attached as Exhibit IV.

[16] *The Economic Contribution of the Mortgage Refinancing Boom*, Economy.Com and Homeownership Alliance, December 2002, p. 7, Mortgage Refinancing Accounts for 31 Percent of 2002 Real Economic Growth in Los Angeles, New Release, Homeownership Alliance, December 2002.

In view of the unprecedented levels of refinancing and importance of refinancing to individuals, families, communities and local, state and national economies, we urge you to do everything possible to immediately spur competition in the title insurance industry. Each week that goes by without real competition means that consumers who refinance their homes will pay millions of dollars in excess premiums to title insurance companies.[18] It also means that consumers who are unable to afford high closing costs will be denied the opportunity to save money and/or obtain needed capital by refinancing.[19] While title insurance companies would like to keep their prices as high as possible for as long as possible, the Commissioner should ensure that competition drives prices down as low as possible as soon as possible.

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[17] A study conducted by Fannie Mae found that consumers use cash raised through refinancing in the following ways:

- 42 % to build an addition or make repairs to their home.
- 30 % to pay down credit card and other debt.
- 15 % to buy a vehicle for the family.
- 13 % to make a major purchase for home (appliances/furniture).
- 8 % to invest or put into savings.
- 7% to pay for children's education
- 3% to start a new business

2002 Fannie Mae National Housing Survey, July 2002, p. 6.

[18] The record of this proceeding includes studies that indicate that the potential savings to California consumers from RLP would be in the hundreds of millions of dollars a year. Without necessarily endorsing these studies, *Amici* believe that they indicate the magnitude of the potential savings to consumers from competition. If not hundreds of millions of dollars annually, it is certainly millions of dollars given the staggering volume of refinancings that are expected this year.

[19] Last year, the U.S. Department of Housing & Urban Development stated that "The process of financing and refinancing a house [] remains too complicated, too costly and too opaque for many borrowers. The monies needed to close on a home are a significant impediment to homeownership and settlement costs are a significant component of these costs." HUD also stated "The types of fees charged by loan originators, title agents and other service providers have multiplied in recent years making it steadily more difficult for borrowers to compare settlement costs." Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers; Proposed Rule, 67 Fed.Reg. 49134, July 29, 2002. While the Insurance Commissioner does not have jurisdiction over every provider of settlement services, he does have jurisdiction over title insurers and must ensure that they are not gouging consumers.

VI. *The Commissioner Should Ensure That Products That Substitute for Traditional Title Policies Meet Minimum Safeguards.*

In this proceeding, title insurers maintain that Radian Lien Protection (RLP) meets the definition of "title insurance" under Sections 104 and 12340.1 of the Insurance Code and, therefore, can only be sold by title insurers.[20] Radian, a mortgage guaranty insurer maintains that it should be allowed to offer RLP because the product meets the definition of "mortgage guaranty insurance" under Sections 119 and 12640.2. Title insurers point to the definition of "title insurance" and argue that RLP provides lenders protection against undisclosed liens and encumbrances. Radian points to the definition of "mortgage guaranty insurance" and argues that RLP provides protection against non-payment of principal and interest for any one of a number of reasons including unknown liens and encumbrances.[21]

Legally, this is an area where the details are crucial. In California, courts have refrained from applying definitions in the Insurance Code in a mechanical manner. For example, in construing Section 22 defining "insurance,"[22] California courts have stated "[E]ach contract must be tested by its own terms as they are written, as they are understood by the parties, and as they are applied under the particular circumstances involved." *Transportation Guarantee Co. v. Jellins*, 29 Cal.2d 242, 248 (1946). Furthermore, "The character of a contract is not to be determined by isolating any single clause or group of clauses; rather the whole of the contract is to be taken together, so as to give effect to every part if reasonably practicable, each clause helping to interpret the

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[20] All statutory references are to the California Insurance Code unless otherwise indicated.

[21] *Amici* do not take a position on this issue which for the reasons stated above requires a detailed examination of the RLP product.

[22] Section 22 broadly defines "insurance" as "a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event."

other." 29 Cal.2d at 247-248. In conducting this analysis, courts look to the "principal object and purpose" of the particular contract at issue, not its "incidental" effect. 29 Cal.2d at 249 and *Truta v. Avis Rent-A-Car*, 193 Cal.App.3d 802 (1987).[23] They also consider whether public policy favors or disfavors allowing such contracts. *California Physicians Services v. Garrison*, 28 Cal.2d 790, 809 (1946) (allowing contract for medical services in rural areas by non-profit organization noting that "[p]robably there is no more impelling need than that of adequate medical care on a voluntary, low-cost basis for persons of small income.") In view of these cases, *Amici* commend the Insurance Commissioner for reopening this matter and undertaking a closer examination of the product that is the subject of this proceeding.

If, after conducting this examination, the Commissioner finds that the principal object and purpose of RLP is to cover lenders for "financial loss by reason of the nonpayment of principal, interest and other sums agreed to be paid under the terms of any note ...secured by a mortgage deed of trust, or other instrument constituting a lien or charge on real estate," he should allow the product especially in light of the pressing need for competition in this area. In addition, *Amici* urge that the Commissioner adopt the following requirements to protect consumers.

1. The RLP policy and marketing materials should disclose to consumers, lenders and investors that (a) the product is mortgage guaranty insurance providing coverage to the insured for non-payment of principal and interest and (b) the product is not a title insurance policy and does not involve a title search and title report.

2. If the policy contains any aggregate limit(s) on coverage, the policy should contain language that makes clear that the risk of loss in excess of such limit(s) belongs to the insured (i.e., the lender or investor if the mortgage is sold in the secondary market), not the consumer/borrower.

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[23] See *Title Insurance Co. v. State Board of Equalization*, 4 Cal.4th 714 (1992) where the California Supreme Court held that underwriting agreements between title insurers and underwritten title companies were not contracts of insurance even if some provisions requiring the latter to cover losses met the statutory definition of "insurance." In reaching this decision, the Court looked to "main function" of the contracts finding that the indemnification provisions were "secondary to the object and purpose of the underwriting agreements." (*Id.* at 727.)

3. The insurer should be prohibited from using credit scoring in underwriting the product.

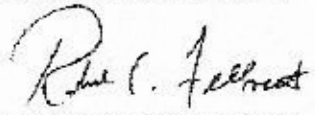
4. The insurer should meet all requirements of the Insurance Code for mortgage guaranty insurers including the minimum capital and reserve requirement for all coverages sold including lien protection.

5. The insurer should file its policy with the Insurance Commissioner five days before marketing the policy to ensure compliance.

These safeguards will help ensure that consumers, lenders and investors in the secondary market are informed of the differences between these RLP and traditional title policies. They will also ensure that any losses over policy limits are borne by lenders or investors. Lenders are in the best position to assess that risk and make an informed decision whether to accept it, seek coverage with higher limits, or cover the risk through some other product altogether. Finally, studies have documented a number of serious problems with credit scoring including incorrect and incomplete information in credit reports used to calculate scores.[24] Credit scoring should not be used until these problems have been addressed.

Dated: June 18, 2003

Respectfully Submitted



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[24] For example, an exhaustive study of credit scoring conducted by Consumer Federation of America and National Credit Reporting Association concluded that "[T]ens of millions of consumers are at risk of being penalized for incorrect information in their credit report, in the form of increased costs or decreased access to credit and vital services." *Credit Score Accuracy and Implications for Consumers*, Consumer Federation of America and National Credit Reporting Association, December 17, 2002, p. 37.

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Exhibit I

Descriptions of Amici Curiae

Exhibit I
Description of Amici Curiae

Center for Public Interest Law

Founded in 1980, the University of San Diego School of Law's *Center for Public Interest Law* (CPIL) serves as an academic center of research and advocacy in regulatory and public interest law. CPIL focuses its efforts on the study of an extremely powerful, yet often overlooked, level of government: state regulatory agencies. CPIL monitors 25 California regulatory agencies, including the Department of Insurance, and publishes the *California Regulatory Law Reporter* to document their activities and decisions. (More information about CPIL can be found at www.cpil.org.)

Consumer Federation of America

Consumer Federation of America (CFA) is a nonprofit association of some 300 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education. For more than three decades, CFA has advocated policies and programs that help ensure a marketplace with vigorous competition, products that are useful and safe, marketing that is truthful and informative, and adequate consumer redress. CFA is particularly sensitive to the needs of the least affluent and educated consumers, who have little discretionary income to waste and are especially vulnerable to deceptive or fraudulent sales. (More information about CFA can be found at www.consumerfed.org.)

California Congress of Seniors

California Congress of Seniors (CCS), founded in 1977, is a statewide nonprofit advocacy organization that provides programs and information to improve the life of older adults. CCS's 43-member board of directors is comprised of senior leaders and advocates from among Congress of California Seniors' affiliated organizations. As an umbrella organization for hundreds of affiliated groups, the CCS serves a combined membership of over 650,000 Californians. Its broad-based coalition includes senior centers, tenant associations, church groups, retired public employee organizations, trade union retirees and a variety of other agencies and associations. CCS is a 501(c)(4) California corporation and operates in conjunction with the Congress of California Seniors Education and Research Fund (CCSERF), a public benefit organization to serve California seniors and their families. For more information about CCS and CCSERF, go to www.seniors.org.)

United Policyholders

United Policyholders (UP) was founded in 1991 as a non-profit organization dedicated to educating the public on insurance issues and consumer rights. The organization is tax-exempt under Internal Revenue Code §501(c)(3).

UP serves as a resource for insurance claimants and actively monitors legal and marketplace developments affecting the interests of all policyholders. UP receives frequent invitations to testify at legislative and other public hearings, and to participate in regulatory proceedings on rate and policy issues.

A diverse range of policyholders throughout the United States communicate on a regular basis with UP, which allows the organization to provide important and topical information to courts throughout the country via the submission of *amicus curiae* briefs in cases involving insurance principles that are likely to impact large segments of the public and business community.

UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in Humana v. Forsyth, 525 U.S. 299 (1999), and its arguments were adopted by the California Supreme Court in Vandenberg v. Sup. Ct. 21 Cal.4th 815 (1999). UP has filed *amicus* briefs on behalf of policyholders in over one hundred cases throughout the United States. (More information about United Policyholders can be found at www.unitedpolicyholders.org.)

League of California Homeowners

The League of American Homeowners (LCH) was formed in January 1993, by a group of homeowners in Southern California who shared a common interested in consumer issues. They envisioned an organization that could provide all homeowners with a central resource of information for home remodeling, real estate transactions and financing. Based in Upland, California, LCH has 18,000 members throughout the California. The League also provides assistance to homeowners in other states.

LCH provides consumer information and assistance to both homeowners as well as buyers, assists homeowners in dealing with home improvement problems by providing impartial consumer advice and direction, acts as a consumer advocate to promote homeownership opportunities for all economic, racial and ethnic segments of our society, provide educational opportunities such as consumer workshops focusing on home improvement and real estate acquisition and promotes and supports equal housing opportunities in accordance with U.S. Civil Rights Law as well as all other applicable state and local regulation. The League publishes a bi-monthly newspaper *"CALIFORNIA HOMEOWNER"* which has a circulation of 25,000 per edition. (More information about LCH can be found at www.homeowners.org.)

Exhibit II

American Land Title Association,
State-By-State Market Share Report 2001,
California 2001

CALIFORNIA - 2001					
1 Company	2 Direct Premiums Written	3 % Premium	4 Other Income	5 Total Revenue	6 % Revenue
FIDELITY FAMILY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Chicago Title Insurance Company	[illegible]	17.1%	133,759	[illegible]	17.3%
Fidelity National Title Insurance Company	[illegible]	[illegible]	2,789,711	[illegible]	[illegible]
Ticor Title Insurance Company	[illegible]	0.3%	474,958	[illegible]	0.3%
Security Union Title Insurance Company	[illegible]	0.1%	[illegible]	[illegible]	1.2%
National Title Insurance (NY)	1,232,934	0.1%	1,937,234	3,170,168	0.2%
Fidelity National Title Insurance Company (NY)	2,489	0.0%	0	2,489	0.0%
FIRST AMERICAN TITLE INSURANCE COMPANY	[illegible]	27.4%	[illegible]		27.3%
LANDAMERICA FAMILY	[illegible]	[illegible]	[illegible]	[illegible]	10.7%
Commonwealth Land Title Insurance Company	[illegible]	6.8%	[illegible]	[illegible]	6.7%
Lawyers Title Insurance Corporation	[illegible]	3.2%	2,094,112	[illegible]	3.3%
Transnation Title Insurance Company	[illegible]	0.8%	1,498	[illegible]	0.9%
Land Title Insurance Company	817,692	0.0%	0	817,692	0.0%
STEWART TITLE GUARANTY COMPANY	[illegible]	[illegible]	[illegible]		[illegible]
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UNITED GENERAL TITLE INSURANCE COMPANY	[illegible]	3.2%	0	[illegible]	3.1%
NORTH AMERICAN TITLE INSURANCE COMPANY	[illegible]	2.4%	[illegible]	[illegible]	2.4%
UNITED TITLE INSURANCE COMPANY	[illegible]	2.1%	0	[illegible]	2.0%
WESTCOR LAND TITLE INSURANCE COMPANY	[illegible]	1.4%	0	[illegible]	1.2%
COMMERCE TITLE INSURANCE COMPANY	[illegible]	1.2%	0	[illegible]	1.2%
NORTHERN COUNTIES TITLE INSURANCE COMPANY	20,120,144	1.1%	[illegible]	[illegible]	1.1%
AMERICAN PIONEER TITLE INSURANCE COMPANY	[illegible]	0.1%	0	[illegible]	0.1%
Total - All Companies (direct business in California	[illegible]	100.0%	[illegible]	[illegible]	100.0%

Exhibit III

MBA Mortgage Finance Forecast,
June 13, 2003

Mortgage Finance Forecast

June 13, 2003

	2002		2003				2004				
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	2001	2002	2003
Housing Measures (Thous)											
Housing Starts	1,702	1,748	1,739	1,667	1,667	1,693	1,698	1,673	1,604	1,705	1,691
Single-Family	1,362	1,410	1,406	1,360	1,349	1,372	1,370	1,352	1,273	1,358	1,372
Two or More	340	332	333	307	318	321	328	321	330	346	319
Sales of Existing Homes	5,400	5,775	5,835	5,666	5,630	5,868	5,719	5,615	5,346	5,567	5,749
Sales of New Homes	1,014	1,015	980	1,003	1,040	1,044	980	979	908	973	1,018
Median Price of Existing Homes (Thous $)	161.4	161.0	163.2	166.5	168.6	164.6	165.6	171.6	156.5	157.3	165.2
Median Price of New Homes (Thous $)	177.3	199.3	184.6	192.8	194.1	191.1	190.0	197.2	170.9	185.0	190.7
Interest Rates (%)											
30-Year Fixed Contract Rate	6.3	6.1	5.8	5.5	5.3	5.5	5.6	5.7	7.0	6.5	5.5
10-Year Treasury Yield	4.3	4.0	3.9	3.6	3.6	3.8	4.0	4.1	5.0	4.6	3.7
1-Year Treasury ARM	4.4	4.5	3.9	3.7	3.7	3.8	3.9	4.0	5.0	4.6	3.8
1-Year Treasury Yield	1.8	1.8	1.3	1.2	1.0	1.2	1.4	1.5	3.6	3.0	1.2
Mortgage Originations											
Total 1- to 4-Family ($B $)	494	774	722	931	928	724	441	470	2,050	2,483	3,340
Refinance Share (%)	60	69	71	68	68	65	50	34	57	59	68
ARM Share (%)	15	13	14	17	18	18	18	18	13	17	17

Notes:

Housing Starts, Existing Home Sales, and New Home Sales are seasonally adjusted at annual rate.

Existing Home Prices and New Home Prices are median prices.

Total 1-4 Family Originations and Refi Share are MBA estimates.

Refinance Share is percent of total dollar volume of loans closed.

ARM Share is percent of total number of conventional purchase loans closed.

Exhibit IV

David A. Berson,
Cash Raised from Cash-Out Refinancing in 2003Should Rival Last Year's Record,
Berson's Weekly Commentary, June 16, 2003

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David W. Berson
Chief Economist
Fannie Mae

Economic Commentary
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Cash Raised from Cash-out Refinancing in 2003 Should Rival Last Year's Record

The yield on 30-year fixed rate mortgages edged down last week to 5.21 percent, falling steadily from mid-April and 150 basis points lower than a year ago. According to the Mortgage Bankers Association's (MBA) weekly survey of mortgage applications, the refinance application index declined in the first week of June from the record high in the last week of May -- still the third highest level ever recorded (the record was set during the Memorial Day week, however, when seasonal adjustments are difficult to gauge for this survey).

With rates likely to edge down some more, refi applications should stay strong in the near term. With a lag between the application and the origination of one to two months, refi originations will remain elevated through much of this year. Homeowners are much more inclined to refinance during the current refi boom (which started in 2001, when the share of refinance originations exceeded 50 percent of total originations) than in the refi booms of the last two decades. Improved technology, such as the use of automated underwriting, as well as a competitive mortgage industry has resulted in a decline in transaction costs. Furthermore, a streamlined process, including reduced documentation, helps shorten the time interval from application to approval. We estimate that about $2.60 trillion of mortgages will be refinanced -- about 35 percent of single-family mortgage debt outstanding projected for this year and 60 percent higher than the previous record of $1.6 trillion refi originations estimated for 2002.

The robust housing and mortgage markets of the past several years have significantly benefited the economy. The refi boom has enabled many homeowners to lower their debt payments by locking in generationally low long-term mortgage rates. As the vast majority of refinancers opt for fixed-rate mortgages, they are insulated from the impact of rising interest rates. Combined with low mortgage rates, robust home price appreciation has allowed many refinancers to tap into their home equity and take some cash out in the process. Surveys of cash-out refinancers indicated that at least half of the cash raised through cash-out refinancing was used for home improvement and other consumption spending, with the rest used for repayment of other higher-cost debt and savings. Thus the refi boom helps homeowners to lower debt payment as well as to restructure their balance sheets, but the most significant contribution of refinancing to the economy is through cash raised from cash-out refinancing (where borrowers increase their mortgage balance by more than the transaction costs involved in the refi process).

Although we project that the average balance increase and the share of cash-out loans this year will be smaller than last year, the number of refi loans will increase significantly from last year. We estimate cash raised through cash-out refinancing will be about $120-$130 billion this year -- close to the previous record of $140 billion estimated for 2002. The proceeds from cash-out refinancings are a significant source of spendable funds for households, and we expect at least half of the

proceeds to be spent this year. For the economic growth to accelerate in the second half of the year as we anticipate, consumer spending has to hold at least at current growth rates and businesses have to be willing to expand production. Thus, cash freed from cash-out refinancing, combined with the tax cut, should continue to prop up consumer spending for the rest of this year.

This week will provide a peek into the health of the housing market, with two reports concerning the homebuilders' sentiment and homebuilding activity. A report that will be closely watched is the consumer price index, given the Federal Reserve's concerns of deflation risks.

- **On Monday The National Association of Homebuilders Housing Market Index should increase to 57 in June** -- continuing the improvement to 56 beginning in May following four months of decline and stagnation, as The Federal Reserve is poised for a rate cut this month, which would push back the timetable for a tightening and keep long-term interest rates low.
- **Also on Monday, the June Empire State Manufacturing Survey (no forecast).** The markets expect a modest decline from last month's 30-point surge in the index, which was the first increase in the general business conditions index in four months.
- **On Tuesday, industrial production is expected to increase by 0.1 percent in May** -- which would be the first increase since January. The conclusion of the war in Iraq is expected to begin to show up in increased in output.
- **Also on Tuesday, housing starts are projected to increase to 1.7 million units (SAAR) in May** -- rebounding from a decline in April. Following very strong new home sales in the first four months of the year, homebuilders would try to build up a healthy level of inventory, which was near record lows in April.
- **On Tuesday, the Consumer Price Index is expected to edge down by 0.1 percent in May** -- smaller than the 0.3-percent decline in April induced by a drop in energy prices. Energy priced have increased in May but still posted a large drop at the producer level in the May Producer Price Index released last week.
- **On Thursday, initial unemployment claims for the week ending June 16 are projected to decline modestly to 420,000** -- claims are expected to be above 400,000, the reading that often indicates a rising unemployment rate, for 16 consecutive weeks. The current weak labor market will continue to weigh down consumer sentiment.
- **Also on Thursday, the Index of Leading Indicators for May is expected to rise by 0.6 percent** -- helped by the increase in the stock market and rising consumer expectations.
- **Another report on Thursday is the Philadelphia Fed Survey for June (no forecast).** The markets hope for an increase after the index posted negative readings in the last three months indicating declining manufacturing activity in the Third Federal Reserve District.
- **The last report on Thursday and also for the week is the May Treasury budget (no forecast).** For the first seven months of fiscal 2003, the unified deficit was $202 billion.

This week's Commentary was written by Drawin T. Velz, Senior Economist.

Declaration of Service

In the Matter of Radian Guaranty, Inc., et al.,

(File No. SF 154040A, OAH No. N-2002070670).

I, Elisa Weichel, hereby declare:

1. I am over eighteen and not a party to the above proceeding.

2. I am an employee of the Center for Public Interest Law, University of San Diego School of Law, 5998 Alcala Park, San Diego, CA 92110, and have upon this day served a copy of the attached **Brief of Amici Curiae** by depositing with Federal Express for next day delivery a copy of the document with postage prepaid thereon and addressed to the following:

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Dated at San Diego, California on June 18, 2003.

/s/

ELISA WEICHEL