

# QUARTERLY REPORT

MID-SOUTH REGULATORY COMPLIANCE GROUP

May 2009

Vol. 6 No. 2

## AN ASSESSMENT OF FAIR LENDING RISK

Attorney General Eric Holder has gone on record describing the American public as “cowards” in the past with respect to the issue of race and has openly stated that the Justice Department will actively pursue discriminatory lending practices that deny credit to members of protected classes or price that credit at a higher rate. Surely that emphasis by the Justice Department will have a direct impact on the Fair Lending exams conducted by the FDIC, the OCC and others. Advance preparation today for your next Fair Lending exam could pay significant dividends.

To that end, the Steering Committees of both Bank Groups authorized Butler Snow to develop a Fair Lending Risk Assessment as a means of starting this proactive process.

As everyone knows, budgetary and other forces have required the bank regulatory agencies to adopt a risk management style of regulation. Emerging from the concept has come the requirement for a risk assessment, the purpose of which is to scope a bank’s systemic risk for violating one or more laws and regulations. In the case of Fair Lending those laws and regulations are the Equal Credit Opportunity Act (Regulation B), the Fair Housing Act, the Community Reinvestment Act, and the Home Mortgage Disclosure Act (Regulation C). Throw in the Federal Civil Rights Act for good measure.

In preparing the Fair Lending Risk Assessment, we called upon our friend, Everett Fields, the Fair Lending Exam Specialist with the FDIC in Dallas. We told Everett of the efforts that the member banks are making with respect to developing a risk assessment and asked for any guidance he could provide. Everett enthusiastically supports this approach and has

agreed to speak to the Group at our November 2009 Annual Meeting on the subjects of Fair Lending and risk assessment. (You may want to mark that date and make an effort to get one or more members of the Bank’s management team to attend.) However, Everett also pointed out that there is not a lot of “how to” guidance available from the regulators. He directed us to the Interagency Fair Lending Examination Procedures as our starting place.

Of course, those procedures have been around for a long time, but if you haven’t read them recently, I would commend them to you. It’s a lot like reading the Bible or the Uniform Commercial Code; you get something new out of it every time.

For instance, I did not recall the instructions to examiners to develop their own risk assessment for a bank (very similar to the exam procedure for BSA) if the bank has not done a risk assessment of its own. The experience everyone had under the BSA proved that you are much better off doing your own risk assessment and having the examiners examine for that, than to allow them to develop their own model.

<b>An Assessment of Fair Lending Risk .....</b>	<b>1</b>
<b>Treasury Department Reveals Its Making Home Affordable Plan .....</b>	<b>2</b>
<b>Legislature Adopts Mississippi S.A.F.E. Mortgage Licensing Act of 2009 .....</b>	<b>4</b>
<b>Important Changes in Consumer Credit Regulation/Mandatory Compliance Dates....</b>	<b>6</b>
<b>Mississippi Legislative Session Ends .....</b>	<b>10</b>
<b>MSRCG May Meeting to Be Held May 19, 2009.....</b>	<b>12</b>
<b>MSRCG Compliance Calendar .....</b>	<b>13</b>

Another small surprise was a reference to the mandatory use of a regression analysis in certain instances where loan volumes are high or credit scores are used as part of the decision making process. As you know, the Group has some experience with regression analyzes as part of the bank regulator's review of rate spread loans using HMDA data.

The risk assessment that we are in the process of finalizing utilizes the FFIEC Fair Lending Examination Guidelines and input that we have been able to obtain from the American Bankers Association and others.

By following the Exam Procedures closely, we hope to convince the examiners that the bank's risk assessment is indeed a valid one and superior to any assessment that they could perform.

It will cover the credit products and services offered by the bank and will include a separate assessment of each of the following risk factors:

- Board and management support for Fair Lending;
- Compliance Program sufficiency;
- Overt indicators of discrimination;
- Disparate treating in underwriting;
- Disparate treatment in steering;
- Disparate treatment in pricing;
- Disparate treatment in marketing;
- Existence of risk mitigants (e.g., preventive measures such as training, independent review, etc.);
- Disparate treatment in collections;
- Fair Lending complaint resolution; and
- Results of regulatory examination and independent review of Fair Lending compliance.

We plan to provide you with the Risk Assessment at the May Quarterly Meeting. Our plan is to spend the morning addressing the Risk Assessment utilizing a panel format and

encouraging participation by all in attendance. As always, please feel free to bring those from your bank that you feel would benefit from hearing this presentation.

<Ed Wilmesherr>

## **TREASURY DEPARTMENT REVEALS ITS MAKING HOME AFFORDABLE PLAN**

The Obama Administration and the Department of Treasury have collaborated to develop a comprehensive set of plans to deal with the ongoing housing crisis and the dual threat of adjustable rate mortgages resetting to unaffordable rates of interest at the same time that housing values are falling due to the increasing rate of delinquencies and foreclosures nationwide.

A number of members of the Group have called with questions about various aspects of the different programs being offered. In particular, several callers have asked about the role of credit counselors in this process. Hopefully, the following paragraphs will answer some of those questions.

Although the Obama/Treasury program continues to be revised, today it is basically comprised of two programs with similar names, but different approaches.

The overall plan is referred to as the Making Home Affordable Plan. The first program under this plan is referred to as the Home Affordable Refinancing Plan and is designed to assist up to five million families with a refinancing of their existing mortgage. The second program is the Home Affordable Modification Plan and is designed to allow up to an additional four million families to modify their existing mortgages to reduce their monthly payment obligations to an affordable level.

Thus far, the Modification Program seems to have gotten the most publicity and perhaps the most traction, so that makes a logical place to start.

Under the Modification Program, the Treasury Department will make up to \$75 Billion in incentives available to provide modifications. The elements of the Modification Program are:

- Monthly Payment Reduction. Treasury will partner with financial institutions to reduce a homeowner's monthly mortgage payments, with the lender first reducing payments on mortgages to no more than 38% debt-to-income ratio. At that point, Treasury will match further reductions in monthly payments on a dollar-for-dollar basis with the lender until a 31% debt-to-income ratio is achieved for the borrower.
- Servicer Incentive Payments. Servicers will receive an upfront payment of \$1,000 for each eligible modification and will also receive a payment of up to \$1,000 each year for up to three years as long as the borrower stays in the program.
- Borrower Incentive Payments. Borrowers are eligible to receive a payment that goes straight towards principal reduction as long as the borrower stays current with monthly mortgage payments. Borrowers can receive up to \$1,000 each year for up to five years.
- Current Borrower Incentive Payment. A one-time bonus of \$1,500 to lenders and \$500 to servicers is available to encourage modification of mortgages before they go into default.

In order to be eligible, borrowers and their mortgage obligations have to meet certain requirements. First, the mortgage to be modified must have been originated on or before January 1, 2009. Applicants for mortgage modification will be accepted until December 31, 2012 and incentive payments will be made for up to five years after the date of entry into the Modification Program. The following additional qualifications must be met:

- The home must be owner-occupied, single-family, one-to-four-unit property.

- The home must be a primary residence and that status must be verified with a tax return, credit report or other documentation.
- The home cannot be investor-owned.
- The home may not be vacant or condemned.
- First lien loans must have an unpaid principal balance of \$729,750 or less.

Lenders participating in the Modification Program must temporarily suspend any foreclosure action while borrowers consider their alternatives. If the Modification Program option fails for some reason, the foreclosure action can be resumed. The Program carries with it no minimum or maximum loan-to-value ratio and a loan can only be modified once under the Modification Program.

Loans placed into the Modification Program will undergo a unique underwriting process. The borrower must basically certify that a financial hardship exists. The servicer will then gather information from tax returns and other documentation to determine the borrower's monthly gross income. The modified obligation will be required to have a 31% front-end DTI which is basically the borrower's monthly mortgage payment including payments for taxes and insurance. A back-end DTI calculation will also be performed which will include all monthly installments, revolving debt and secondary mortgage debt verified through a credit report. Borrowers with a back-end DTI equal to or greater than 55% will have to participate in HUD-approved counseling. This is the only area in which any of these programs require the involvement of mortgage counselors.

To encourage the modification of more mortgages, there will be cash payments available to offset in part any losses that may result from future declines in home prices.

The Refinance Program is only available for conforming loans owned or securitized by Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac have issued guidance to originating

lenders that should allow them to begin offering the refinance option.

To be eligible for the Refinance Program a property must be owner-occupied. The borrower must have sufficient income to support the new mortgage, and the first mortgage may not exceed 105% of the current market value of the property. A borrower may have a second lien on the property in addition to the first mortgage so long as the first mortgage does not exceed 105% of the value of the property and all junior lien holders agree to subordinate to the new first mortgage. Borrowers under this Program are not allowed to take cash out of the refinance transaction and only transaction costs may be included in the refinanced amount. Borrowers who are currently delinquent on their mortgage do not qualify for this Program.

In a sign of the times, those lenders that have participated in any of the recently announced government programs such as the Capital Purchase Plan are required to participate in the various Mortgage Modification and Refinance Programs. And not surprisingly, principles of Fair Lending will apply to the application, refinance and modification transactions.

The Treasury Department has published a Making Home Affordable Housing Counselor Q&A which is available to housing counselors. Funds are made available under these Programs for HUD-sponsored credit counseling for eligible borrowers with high debt-to-income ratios. These are essentially the only references that the Programs make to the role of mortgage counselors.

Recent articles in *The Wall Street Journal* and other financial trade publications have reported a significant increase in fraudulent scams perpetrated by individuals holding themselves out to be mortgage counselors. These individuals seek out borrowers in distress and offer to arrange for modification or refinancing of their existing mortgages in return for a fee which they require to be paid up front. In most cases, the fee is paid, but no services are provided. While there are undoubtedly honest credit counselors who are seeking to be of

service to financially stressed borrowers, nothing about either of these Programs requires the involvement of a counselor to effect the refinancing or the modification. If you should be contacted by a counselor on behalf of one of your customers who is in distress, you should be alert to the possibility that your customer could be the victim of a scam; however, in most fraudulent transactions, the lender is never contacted by the counselor.

It remains to be seen whether these Programs fulfill their goal of avoiding numerous foreclosures and stabilizing home prices; however, it seems clear that financial institutions will have to collectively work their way through the mortgage refinance/modification process in order for credit markets to return to something like normal.

<Ed Wilmesherr>

### **LEGISLATURE ADOPTS MISSISSIPPI S.A.F.E. MORTGAGE LICENSING ACT OF 2009**

At previous WIFI sessions, we have discussed the impact of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the so-called "S.A.F.E. Mortgage Licensing Act of 2008") which is a part of the larger Housing and Economic Recovery Act of 2008.

The purpose of the S.A.F.E. Act is to establish a nationwide system for licensing and/or registering what the Act refers to as "mortgage loan originators."

The S.A.F.E. Act defines a "mortgage loan originator" as an individual who (1) takes a residential mortgage loan application and (2) offers or negotiates terms of a residential mortgage loan for compensation or gain. The term "mortgage loan originator" does not include an individual who performs purely "administrative or clerical tasks" on behalf of a loan originator. Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry

and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

The Act calls for the various states to establish a nationwide mortgage licensing system and registry which would access a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors. This system is referred to as the Nationwide Mortgage Licensing System and Registry (the "NMLSR").

Loan originators who are employees of a depository institution or a subsidiary that is controlled or owned by a depository institution and which are regulated by one of the federal bank regulatory agencies are exempt from the licensing requirements under the Act; however, these loan originators must be registered under the same registry established by the Conference of State Bank Supervisors and in accordance with any state registration requirements.

The Act charges the Federal Financial Institutions Examination Council ("FFIEC") with developing and maintaining a system for registering employees of a depository institution or a wholly-owned subsidiary of a depository institution that meet the definition of mortgage loan originators. The Act instructed the FFIEC that it must, at a minimum, require that the NMLSR obtain and maintain information concerning the registered employees' identity, including fingerprints for submission to the FBI to obtain a background check and a personal history and experience that would allow the nationwide registry system to obtain information about any administrative, civil or criminal investigations involving the individual.

Each employee registered with the NMLSR will be assigned a unique identifier that will be used to track both the registered loan originator and loans processed by that originator.

The Act challenges each state to develop its own licensing and registration system following the nationwide protocol and provides that states that fail to do so will be subjected to a registry

system developed by the Department of Housing and Urban Development.

The Mississippi Legislature has enacted the Mississippi S.A.F.E. Mortgage Licensing Act of 2009. This state statute closely tracks the federal act including the definitions of mortgage loan originator and the exemption from licensing for mortgage loan originators employed by insured financial institutions and wholly-owned subsidiaries of insured federal institutions. These mortgage loan originators do, however, have to be registered according to guidelines yet to be released by the FFIEC. Note that employees of subsidiaries wholly-owned by a bank holding company would not qualify for exemption under the federal act or the state act and would be subject to the requirement to be licensed, including the continuing education and other license requirements.

It will be important for managers of the Human Resource function to coordinate with their mortgage lending staff to determine which individuals will need to be registered as loan originators. Pay particular attention to the process for taking an application and negotiating loan terms and conditions. An adequate number of individuals need to be registered as loan originators to provide for coverage at every office where an application could be taken or terms and rates negotiated. Likewise, it will be necessary that there be an adequate number of registered loan originators to provide coverage during all business hours and during vacation time, sick days and other arranged leaves of absence. Training for mortgage loan originators and clerical assistants will be needed to clarify the boundaries of their new job descriptions.

Further guidance should be forthcoming from the FFIEC shortly. We will keep you posted with respect to any new or additional requirements they may impose.

<Ed Wilmesherr>

<b>IMPORTANT CHANGES IN CONSUMER CREDIT REGULATION/ MANDATORY COMPLIANCE DATES</b>		
<b>Compliance Date</b>	<b>Summary of Important Changes</b>	<b>Law/Regulation</b>
January 16, 2009	<b>RESPA servicing transfer disclosure revised</b>	HUD Reg. X, § 3500.21
July 30, 2009*  *Pending adoption of final rules. Proposed rules issued 12/10/08. Comment period expired 02/09/09.	<b>Early Truth in Lending disclosures</b> <ul style="list-style-type: none"> <li>• Early disclosures for all consumer dwelling secured closed-end loans (first or subordinate lien) that are also subject to RESPA</li> <li>• Disclosures within 3 business days after receipt of application and before any fee imposed other than for credit report</li> <li>• Creditor must wait at least 7 business days after disclosure to close loan</li> <li>• If APR changes by more than tolerance, creditor must give new disclosures and wait at least 3 business days to close loan</li> </ul>	Fed. Res. Reg. Z, § 226.17
October 1, 2009 <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 10/01/09.</li> </ul>	<b>Higher priced mortgage loans; prohibited acts or practices</b> <ul style="list-style-type: none"> <li>• Consumer credit secured by consumer's principal dwelling where loan APR exceeds "average prime offer rate" for comparable loan by 1.5% or more for first lien or 3.5% or more for subordinate lien</li> <li>• lending on collateral value prohibited: <ul style="list-style-type: none"> <li>○ verification of repayment ability required, including verification of income, assets, employment, current obligations and mortgage related obligations using 3rd party documents</li> <li>○ compliance safe harbor - verify income and assets to be relied upon and determine consumer's ability to pay highest principal and interest payment expected in first 7 years, considering current and mortgage related obligations and using either DTI or residual income</li> <li>○ no pattern or practice required for violation</li> </ul> </li> <li>• Prepayment penalties restricted: <ul style="list-style-type: none"> <li>○ prohibited if loan payment amount can change during first 4 years</li> <li>○ prohibited if prepayment results from refinancing by same creditor or affiliate</li> <li>○ prepayment penalty may not extend beyond first 2 years</li> </ul> </li> </ul>	Fed. Res. Reg. Z, § 226.34(a) and § 226.35
October 1, 2009 <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 10/01/09</li> <li>• Servicing rules apply to all covered loans serviced on or after 10/01/09</li> </ul>	<b>Credit secured by a consumer's principal dwelling; prohibited acts or practices</b> <ul style="list-style-type: none"> <li>• Coercion of appraiser - prohibits creditor, mortgage broker or any affiliate from attempting to coerce, influence or encourage appraiser to misstate value of a dwelling</li> <li>• Servicing practices: <ul style="list-style-type: none"> <li>○ payments credited as of date of receipt except where delay will not result in additional charge or reporting of negative information to credit bureau <ul style="list-style-type: none"> <li>▪ servicer may impose in writing reasonable</li> </ul> </li> </ul> </li> </ul>	Fed. Res. Reg. Z, § 226.36

	<p>requirements for making of payments in order to receive immediate credit</p> <ul style="list-style-type: none"> <li>○ pyramiding of late charges prohibited</li> <li>○ payoff statements to be provided within reasonable time after request <ul style="list-style-type: none"> <li>▪ safe harbor - 5 calendar days</li> <li>▪ statement must reflect total amount to satisfy loan as of specified date</li> </ul> </li> </ul>	
<p>October 1, 2009</p> <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 10/01/09.</li> </ul>	<p><b>HOEPA changes</b></p> <ul style="list-style-type: none"> <li>• verification of ability to repay standard revised (see higher priced mortgage loans above); pattern or practice standard for violation eliminated</li> <li>• prepayment penalty restrictions revised (see higher priced mortgage loans above)</li> </ul>	<p>Fed. Res. Reg. Z, § 226.32(d) and § 226.34(a)</p>
<p>October 1, 2009</p> <ul style="list-style-type: none"> <li>• Advertisements occurring on or after 10/01/09.</li> </ul>	<p><b>Truth in Lending advertising disclosures</b></p> <ul style="list-style-type: none"> <li>• open-end credit including home equity lines of credit <ul style="list-style-type: none"> <li>○ revised advertising disclosures for promotional rates and payments, balloon payments, rates on variable rate plans, tax implications</li> <li>○ additional disclosures must be with equal prominence and in close proximity to triggering terms</li> </ul> </li> <li>• dwelling secured closed-end credit <ul style="list-style-type: none"> <li>○ advertising promotional or discounted rates or payments triggers disclosure of rates and payments for full term</li> <li>○ additional disclosures must be with equal prominence and in close proximity to triggering terms</li> </ul> </li> <li>• certain advertising practices banned as deceptive or misleading</li> </ul>	<p>Fed. Res. Reg. Z, §§ 226.16 and 226.24</p>
<p>October 1, 2009</p> <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 10/01/09, or any transaction which closes on or after 01/01/10.</li> </ul>	<p><b>HMDA rate spread reporting for higher priced mortgage loans</b></p> <ul style="list-style-type: none"> <li>• conforms reporting of price information to definition of higher priced mortgage loans under Reg. Z</li> <li>• lenders will report spread between loan APR and average prime offer rate for comparable loan if spread 1.5% or more on first lien loan or 3.5% or more on subordinate lien loan</li> </ul>	<p>Fed. Res. Reg. C, § 203.4</p>
<p>January 1, 2010</p>	<p><b>RESPA GFE and HUD-1/1A</b></p> <ul style="list-style-type: none"> <li>• Mandatory 3 page GFE form includes disclosure of loan terms and estimated settlement costs <ul style="list-style-type: none"> <li>○ must be provided within 3 business days after receipt of application and before any fee imposed other than for credit report</li> <li>○ settlement charges disclosed in GFE must remain available for at least 10 business days</li> <li>○ tolerances for accuracy</li> <li>○ re-disclosure must be provided within 3 business days of changed circumstances</li> </ul> </li> <li>• Revised HUD-1/1A <ul style="list-style-type: none"> <li>○ lines re-organized and include reference to corresponding blocks on GFE</li> <li>○ contains comparison with GFE disclosures and disclosure of compliance with tolerance levels</li> <li>○ includes disclosure of final loan terms</li> </ul> </li> </ul>	<p>HUD Reg. X, § 3500.7 and § 3500.8</p>

<p>January 1, 2010</p>	<p><b>Overdrafts</b></p> <ul style="list-style-type: none"> <li>• Disclosure of aggregate overdraft fees - periodic statements must disclose aggregate amount of overdraft fees and returned item fees for statement period and year-to-date. Currently, only institutions that promote or advertise payment of overdrafts must disclose.</li> <li>• Disclosure of balance information - institutions that provide account balance information through automated system must provide balance that excludes amount made available to cover overdrafts.</li> </ul>	<p>Fed. Res. Reg. DD, § 230.11</p>
<p>April 1, 2010</p> <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 04/01/10.</li> </ul>	<p><b>Mandatory escrows for taxes and insurance</b></p> <ul style="list-style-type: none"> <li>• required on first lien higher priced mortgage loans covering a site built dwelling</li> </ul>	<p>Fed. Res. Reg. Z, § 226.35</p>
<p>July 1, 2010</p>	<p><b>Credit card accounts; prohibited acts or practices</b></p> <ul style="list-style-type: none"> <li>• Time to make payments - creditor to allow reasonable time for consumer to make payments                         <ul style="list-style-type: none"> <li>○ Safe harbor - statements sent at least 21 days prior to due date</li> </ul> </li> <li>• Allocation of payments - when different APRs apply to different balances, payments above minimum payment to be applied first to balance with highest rate or pro rata to all balances</li> <li>• Rate increases - requires disclosure at account opening of all rates that will apply and prohibits increases in those rates, except where:                         <ul style="list-style-type: none"> <li>○ disclosed rate expires after specified time and increased rate applies which was also disclosed at account opening</li> <li>○ rate increases due to operation of index (variable rate)</li> <li>○ creditor increases rate after first year but only for new transactions and after giving 45 day advance notice</li> <li>○ minimum payment is more than 30 days late</li> </ul> </li> <li>• Two cycle billing - prohibits use of two cycle billing method to calculate finance charge</li> <li>• Financing security deposits and fees - financing security deposits and fees for credit availability (i.e., account-opening or membership fees) prohibited if charges for first 12 months exceed 50 % of credit limit. Also limits security deposits and fees charged at account opening to 25% of credit limit and any additional amounts (up to 50 %) must be spread evenly over at least next five billing cycles</li> </ul>	<p>Fed. Res. Reg. AA, §§ 227.21 to 227.26;</p> <p>OTS Regulations, Part 535, §§ 535.21 to 535.26;</p> <p>NCUA Regulations, Part 706, §§706.21 to 706.26</p>
<p>July 1, 2010</p>	<p><b>Credit cards and open end credit plans other than HELOCs; disclosures</b></p> <ul style="list-style-type: none"> <li>• Application and solicitation disclosures - Format and content changes including:                         <ul style="list-style-type: none"> <li>○ Format - changes to summary table of key terms including type size, boldface type for certain terms, and the placement of information</li> <li>○ Content - duration of any penalty rates to be disclosed, simplifies variable rate disclosures, revises grace period disclosures</li> </ul> </li> <li>• Account opening disclosures - certain disclosures to be</li> </ul>	<p>Fed. Res. Reg. Z, Subpart B - Open-end credit, §§ 226.5, <i>et seq.</i></p>

	<p>more conspicuous. Certain key terms to be disclosed in summary table similar to credit card application and solicitation disclosures.</p> <ul style="list-style-type: none"> <li>• Periodic statement disclosures - revises periodic statement disclosures to be more understandable, primarily by format requirements. Changes include:             <ul style="list-style-type: none"> <li>○ Interest charges and fees to be grouped separately, with monthly total for each. Interest charges to be itemized by type of transaction (i.e., interest on purchases, and interest on cash advances). Requires separate year-to-date totals for fees and interest charges.</li> <li>○ Effective APR - requirement to disclose effective APR eliminated. New requirement to disclose interest and fee totals for the month and year-to-date considered more effective.</li> <li>○ Minimum payment disclosure - must disclose effect of making only minimum payment on time needed to repay account balance.</li> </ul> </li> <li>• Notice of change in terms - expands instances where notice required and increases notice period.             <ul style="list-style-type: none"> <li>○ Notice period - written notice of change in terms to be required 45 days in advance.</li> <li>○ Notice of penalty rate increases - requires 45 day advance notice before increasing rate due to delinquency or default or as a penalty.</li> <li>○ Summary table - When change in terms or penalty rate notice accompanies periodic statement, tabular disclosure required on front of periodic statement showing key terms changed.</li> </ul> </li> <li>• Additional protections for consumers:             <ul style="list-style-type: none"> <li>○ Advertising "fixed" rates - permitted only if time period specified and rate may not increase for any reason during that time, or, if no time period specified, rate will not increase for any reason while plan is open.</li> <li>○ Cut-off times and due dates for mailed payments - must set reasonable cut-off hours for mailed payments to be deemed timely on the due date. Safe harbor - 5 p.m. is a reasonable time. When due date falls on a weekend or holiday, payment received on next business day is timely.</li> </ul> </li> </ul>	
<p>October 1, 2010</p> <ul style="list-style-type: none"> <li>• New transactions for which the creditor receives an application on or after 10/01/10.</li> </ul>	<p><b>Mandatory escrows for taxes and insurance</b></p> <ul style="list-style-type: none"> <li>• required on first lien higher priced mortgage loans covering a manufactured home</li> </ul>	<p>Fed. Res. Reg. Z, § 226.35</p>
<p>Pending</p> <ul style="list-style-type: none"> <li>• awaiting regulations from FFIEC</li> </ul>	<p><b>Registration of mortgage loan originators</b></p> <ul style="list-style-type: none"> <li>• mortgage loan originator employees of insured depository institutions and their subsidiaries to be registered in nationwide registry</li> </ul>	<p>Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)</p>

<Cliff Harrison>

## MISSISSIPPI LEGISLATIVE SESSION ENDS

The 2009 regular session of the Mississippi legislature recessed on April 1 with tentative plans to reconvene in May or June once more details about state tax revenues and the federal stimulus package are available. Several banking related bills were passed prior to the recess and have since been signed by the Governor. We will briefly summarize some of the more important pieces of legislation.

Successor of deceased depositor. SB 2972 amends the definition of “successor” as it applies to Miss. Code § 81-5-63 to include a decedent’s adult sibling. Under this statute, a bank can turn over a bank account balance of up to \$12,500 to a decedent’s successor without the necessity of administration of an estate. Prior to this change, “successor” was defined as a “surviving spouse, if no spouse, then surviving children, and if no spouse or children, then surviving parent.” SB 2972 provides that, if there is no surviving spouse, child, or parent, then payment can be made to “any adult sibling.” This change went into effect immediately upon the Governor signing the bill on March 23.

Settlement of small estates. HB 353 amends Miss. Code § 91-7-322. That statute permits a bank or other person to turn over the successor of a deceased person any personal property of the decedent or to pay to the successor any debt owed to the decedent, provided the total value of the estate does not exceed \$30,000, at least 30 days have elapsed since the decedent’s death and no probate or estate proceeding has been filed. The successor must provide an affidavit confirming those facts and setting forth the successor’s relationship to the decedent. HB 353 increases the maximum value of a decedent’s estate from \$30,000 to \$50,000 for purposes of this statute. The bill was signed into law by the Governor on March 18 and becomes effective July 1, 2009. The definition of “successor” for purposes of this statute was not amended, so it includes “surviving spouse, if no spouse, then surviving children, and if no spouse

or children, then surviving parent,” but does not include a sibling.

Study on real property recordings. HB 489 amends the “Task Force to Study Uniformity in Real Property Recordings” to include representation by tax assessors and collectors and designates the Secretary of State as chairman of the task force. The Senate added two additional representatives of the Chancery Clerks Association, bringing the total Chancery Clerk seats on the task force to 3. HB 489 was signed into law by the Governor on March 26 and went into effect immediately upon being signed.

Formatting standards for real property recordings. The law creating the Task Force to Study Uniformity in Real Property Recordings was originally enacted in the 2008 session along with 2008 HB 475 which established new formatting standards for documents to be recorded with the Chancery Clerk. Although the legislation was passed in 2008, the formatting standards do not become effective until July 1, 2009. If you have not already done so, now would be a good time to review your form deed of trust or other recordable document forms to be sure they comply with the new standards. The standards include the following:

- documents should not be permanently bound or in a continuous form or have attachments stapled to any page, but individual pages may be stapled together and it is okay to attach a bar code or return address label as long as it is firmly attached;
- documents should be printed in at least 8 point type size on white paper of at least 20 pound weight and only on one side of the page (If a document, other than a plat or survey, is printed in smaller than 8 point type, it must be accompanied by an exact typewritten or printed copy that meets the minimum type size requirements and which is to be recorded with the document.);
- documents must sufficiently legible to produce a clear reproduction (If a document,

other than a plat or survey, is not sufficiently legible, it must be accompanied by an exact typewritten or printed copy that meets the minimum type size and legibility requirements which is to be recorded with the document.);

- text must be in a color and of sufficient clarity to produce a readable reproduction;
- signatures must be in black or blue ink and sufficiently clear to produce a clear copy; the signer's name shall be typed, printed or stamped beneath the signature, and the typing, printing or stamp should not cover any other part of the document;
- the first page should have a top margin of at least 3 inches and the side and bottom margins should be at least 3/4 of 1 inch (Nonessential information like form numbers or customer notations may appear in a side or bottom margin but not the top margin.);
- the first page should contain the following information below the three-inch margin: a) name, address and telephone number of the preparer, b) a return address, c) title of the document, d) all grantors' names, e) all grantees' names, f) any address and telephone number of the grantor and grantee when required by state law, and g) the legal description of the property or indexing instructions (If there is not enough space on the first page for the full legal description or indexing instruction, immediately succeeding pages must be used.)

Some documents are exempt from the format requirements including documents executed before July 1, 2009, military separation documents, documents executed outside the United States, a certified copy of a document issued by a court or governmental agency (such as a vital record), a document where one of the original parties is deceased or incapacitated, a document formatted to meet court requirements, a federal tax lien, or a filing under the UCC.

The clerk should not refuse to record a document that fails to meet the standard, but will charge an additional recording fee of \$10 unless the document is dated prior to July 1, 2009 or is otherwise exempt. Failure to conform to the

standards does not affect the validity or enforceability of the document.

Preparation of deeds, deeds of trust. SB 3106 requires any attorney preparing a deed or a deed of trust for recording with the Chancery Clerk to include the attorney's Mississippi bar number. SB 3106 was signed into law by the Governor on March 26 and becomes effective July 1, 2009.

Lienholder as payee on insurance check. HB 1307 amends Miss. Code § 83-11-551 to require an insurer paying a "total loss" claim under automobile coverage to add a lienholder as a payee on the check along with the insured. Current law would permit the insurer to name either the business repairing the vehicle or the lienholder in addition to the insured. The amendment makes it plain that the lienholder must be added in the event of a total loss. HB 1307 was signed into law by the Governor on March 30 and becomes effective July 1, 2009.

Mortgage Licensing Act. SB 2983, the Mississippi S.A.F.E Mortgage Licensing Act, creates a mortgage originator licensing system to comply with the Federal S.A.F.E. Mortgage Licensing Act. Mortgage loan originators will have to be individually licensed by the state and satisfy pre-licensing and continuing education requirements, testing, a background check and be registered in a nationwide registry system maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. Employees of depository institutions their subsidiaries are exempt from state licensing, but mortgage loan originators employed by those institutions will be required by federal law to register with the national registry once federal regulations are issued by the FFIEC. The bill includes a change that may affect some bank related mortgage companies. Under current law, a mortgage company owned by a bank or financial holding company was exempt from licensing but was required to register with the state by filing a notice and paying a fee. This notice option was deleted which means that holding company subsidiaries that are mortgage lenders will now need to be licensed and their mortgage loan

originator employees will have to be licensed and registered as well. A depository institution and any mortgage subsidiary owned or controlled by a depository institution continue to be exempt from state licensing. SB 2983 was approved by the Governor on April 15 and becomes effective July 31, 2009.

Securities Act. HB 781 replaces Mississippi's current securities laws with a modified version of the Uniform Securities Act of 2002, as recommended by the Secretary of State's Securities Laws Study Group. Among other things, it amends current law dealing with registration and exemptions from registration of securities, registration of broker-dealers and investment advisers, and securities fraud and gives the Secretary of State powers to investigate, prosecute (through the office of the Attorney General), and sanction individuals and securities firms that violate the securities laws. HB 781 was signed into law by the Governor on April 13 and becomes effective January 1, 2010.

"Entity" ID theft. HB 1357 criminalizes identity theft of an "entity". This bill expands the crime of ID theft to include false statements or representations as to the identity of an entity, including falsely claiming to be associated with a business or entity and supplying the entity's name, with the intent to deceive in order to open banking accounts, obtain credit cards, or other services. HB 1357 was signed into law by the Governor on March 18 and becomes effective July 1, 2009.

Computer crimes. HB 1362 adds "computer crimes" to the list of crimes which can be investigated by the State Attorney General. HB 1362 was signed into law by the Governor on March 18 and becomes effective July 1, 2009

<Cliff Harrison>

## **MSRCG MAY MEETING TO BE HELD ON MAY 19, 2009**

The MSRCG will hold its Quarterly Meeting on May 19, 2009, at the Racquet Club of Memphis in the Large Ballroom located at 5111 Sanderlin Avenue, Memphis, Tennessee. Registration will begin at 9:30 a.m. with the Quarterly Meeting to begin promptly at 10:00 a.m.

During the May Quarterly Meeting, we will utilize a panel discussion format to cover in detail the Fair Lending Risk Assessment prepared at the request of the Steering Committee. In addition, we will present a summary in chronological order of each of the regulatory changes for 2009 and through 2010. Other topics will include flu pandemic preparedness and new legislative developments. The lunch hour will provide the usual summary of recent regulatory developments.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration form enclosed with this copy of the *Quarterly Report* to Liz Crabtree no later than **Wednesday, May 13, 2009** so that arrangements for lunch can be finalized. We look forward to seeing you there.

<Ed Wilmesherr>

## MSRCG COMPLIANCE CALENDAR

<b>2/13/06</b> - OFAC Guidelines Effective	<b>10/1/08</b> – Electronic Disclosure Regulation effective
<b>4/1/06</b> - Deposit insurance limits on retirement accounts increased to \$250,000	<b>11/1/08</b> – Red Flag Guidelines compliance mandatory
<b>4/1/06</b> - Effective date for FACT Act regulations on use of medical information in determining credit eligibility	<b>5/19/09</b> – MSRCG May Quarterly Meeting
<b>6/30/06</b> - Effective Date for use of new SFHD forms	<b>7/21/09</b> – MSRCG Steering Committee Meeting
<b>7/1/06</b> - Reg. DD Amendments on Overdraft Privilege Plans Effective	<b>8/25/09</b> – MSRCG August Quarterly Meeting
<b>7/1/06</b> - Effective date for Reg. CC amendments on remotely created checks	<b>9/22/09</b> – MSRCG Steering Committee Meeting
<b>11/1/06</b> - EPA All Appropriate Inquiries Rule Effective	<b>10/1/09</b> – HOEPA Regulations changes generally effective
<b>1/1/07</b> - Mandatory compliance date for Reg. E changes on electronic check conversions, payroll card accounts and ATM surcharge disclosures	<b>11/17/09</b> – MSRCG November Annual Meeting
<b>7/1/07</b> - Reg. E payroll card account provisions effective	<b>4/1/10</b> – Escrow requirements effective for site-built homes
<b>10/01/07</b> - National Defense Authorization Act Usury Provisions Effective	<b>7/1/10</b> - Amendments to Regulation AA become effective
<b>1/1/08</b> – FACT Act Affiliate Marketing Rule Effective	<b>10/1/10</b> – Escrow requirements effective for mobile homes
<b>10/1/08</b> – FACT Act Affiliate Marketing Rule Mandatory Compliance Deadline	

&lt;Ed Wilmesherr&gt;