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Quarterly Report

Mid-South Regulatory Compliance Group

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WELCOME DOUG WEISSENGER

We are pleased to introduce to you the latest addition to our banking team. Doug Weissenger joined Butler Snow in March. Doug comes to us from a boutique banking law firm in Austin, TX where he focused on mergers and acquisitions, corporate and securities law, and regulatory compliance. He is a native Mississippian, grew up in the Delta and comes from a banking family. At the moment, Doug is temporarily located in our Austin, TX office, but he and his family will be moving to Memphis later this summer. Doug will be at the May quarterly meetings in Jackson and Memphis. We've told him what a special group you all are, and he is looking forward to the chance to get to know and work with you all. We're excited to have him on board. Welcome, Doug!

<Cliff Harrison>

PRIVATE FLOOD INSURANCE

As you know, under the National Flood Insurance Program (NFIP), financial institutions are prohibited from making loans secured by improved real property located in special flood hazard areas unless the property has adequate flood insurance coverage. Federal regulators recently issued a joint final rule to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters), which was enacted in part to stimulate the private flood insurance market by requiring lenders to accept private flood insurance that provides adequate flood coverage under the NFIP. The final rule takes effect July 1, 2019, so from that day forward, financial institutions must accept private flood insurance policies that satisfy certain criteria on loans secured by property located in flood zones.

Mandatory Acceptance. To qualify as a valid private flood insurance policy, the policy must meet the statutory definition of "private flood insurance". The final rule defines "private flood insurance" as a policy that:

(1) is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance a regulator of that State or jurisdiction or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the State

Insurance regulator of the State or jurisdiction where the property to be insured is located;

(2) provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP) issued under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution's behalf;

(4) includes information about the availability of flood insurance coverage under the NFIP;

(5) includes a mortgage interest clause similar to the clause contained in an SFIP;

(6) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and

(7) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

Since Biggert-Waters was enacted, a major concern for financial institutions has been how to determine if a private flood policy's coverage is "at least as broad as" SFIP coverage. The final rule attempts to solve this issue by providing that a private policy is "at least as broad as" the coverage provided under an SFIP if the policy, at a minimum:

(1) defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(2) contains the coverage specified in an SFIP;

(3) contains deductibles no higher than SFIP deductibles for policy amounts up to NFIP maximums;

(4) only excludes losses that are excluded in an SFIP, except those that apply to coverage that is beyond what is provided by an SFIP; and

(5) does not contain conditions that narrow the coverage provided in an SFIP.

<u>Discretionary Acceptance</u>. The final rule also outlines the process by which financial institutions may accept, at their discretion, private flood policies that fail to meet the statutory definition of "private flood insurance". Financial institutions may accept a private flood insurance policy that does not meet the definition of "private flood insurance" as long as the policy:

(1) provides the minimum amount of coverage required by statute, which is at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the property;

(2) is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located;

(3) covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(4) provides sufficient protection of the designated loan, consistent with general

safety and soundness principles, and the financial institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

To aid financial institutions determine whether a private policy that fails to meet the statutory definition provides "sufficient protection", federal regulators provided the following factors that financial institutions may consider:

(1) whether the flood insurance policy's deductibles are reasonable based on the borrower's financial condition;
(2) whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary;
(3) whether the terms and conditions of the flood insurance policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral;
(4) whether the flood insurance policy complies with applicable State insurance laws; and
(5) whether the private insurance company has the financial solvency, strength, and ability to satisfy claims.

In addition, financial institutions may accept nontraditional flood coverage provided by a mutual aid society, which is defined as an organization (1) whose members share a common religious, charitable, educational, or fraternal bond, (2) that covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond, and (3) that has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. Examples of mutual aid societies include Amish Aid. Financial institutions may accept a plan issued by a mutual aid society if (1) the applicable federal regulator has determined that the plan qualifies as flood insurance for purposes of Biggert Waters, (2) the plan provides coverage in the amount required by the flood insurance purchase requirement, (3) the plan provides specified coverage for the mortgagor and mortgagee as loss payees, and (4) the financial institution documents in writing its determination that the plan provides sufficient protection of the applicable loan, consistent with general safety and soundness principles.

Safe Harbor. To help financial institutions determine if a private insurance policy is acceptable, the final rule contains a safe harbor. A financial institutions may accept a private policy, without further review, if the policy contains the following statement: "**This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.**" The statement can be included within the text of the policy or as an endorsement to the policy. However, the final rule does not require insurance companies to include the statement in a private policy, and financial institutions cannot reject a private policy simply because the statement is not provided. Also, it remains to be seen whether insurance companies will revise their policies to reflect the terms required to be equivalent to a standard policy.

Financial institutions that display a pattern of incorrectly rejecting private policies could be subject to civil money penalties. Accordingly, we recommend that you update your policies and procedures before the July 1, 2019 deadline. At a minimum, your policies and procedures should incorporate the regulators' recommended factors to determine if a private policy provides "sufficient protection" for a loan and provide for thorough documentation in the application of these factors. We also encourage you to contact insurance companies in your community to determine if they plan to update the terms of their flood policies to meet the statutory definition of flood insurance or include the safe harbor statement.

<Doug Weissinger>

RESPA – SECTION 8 REVISITED

The federal banking agencies recently published updated interagency examination procedures for RESPA. Also, just last week, a "little bird" gave us a "heads up" that examiners are being trained nationwide on RESPA, in particular on RESPA Section 8, and that examiners will begin enhanced reviews for compliance sometime in 2020. Your steering committee's crystal ball was working well as the committee asked that we include this topic in the quarterly meeting, so this appears to be very good timing!

One of the stated purposes of the 1974 Real Estate Settlement Procedures Act was the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of mortgage settlement services. Section 8(a) of RESPA broadly prohibits payment or acceptance of any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business related to a settlement service will be referred to any person. RESPA Section 8(b) similarly prohibits fee splitting and states that no person may pay or accept any portion of any fee for a settlement service other than for service performed.

The prohibition against kickbacks and unearned fees means, in brief:

- No fees may be paid or received by anyone for referral of business that is part of a settlement service, and that includes origination of a mortgage loan. A referral is a non-compensable service.
- No split of fees or charges for settlement services may be given or received, except for settlement services actually performed.

A "thing of value" is broadly defined and covers a wide range of items including: money, things, discounts, salaries commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services or all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. A "referral" may be oral or written and covers pretty much anything that is directed to a person that may influence the selection of a settlement service provider.

There are exceptions. Section 8(c) of RESPA, states specifically that "[n]othing in this section shall be construed as prohibiting" payments to attorneys or title companies for services actually rendered, payments by a lender to its agent (e.g., employee) for services performed, payments between real estate agents and real estate brokers under cooperative brokerage agreements, and payments under affiliated business arrangements (provided required disclosures are given, the use of the affiliated business is not required, and the only thing of value received, other than payment for actual settlement services provided, is a return on the ownership interest in the affiliated business). There is an additional exception that helps protect against overly broad interpretations of Section 8(a). RESPA Section 8(c) states that nothing in Section 8 prohibits "the payment to any person of … bona fide … compensation for goods or facilities actually furnished or for services actually performed." Long standing HUD statements of policy, which predate Dodd-Frank's transfer of authority over RESPA to the CFPB, indicate that bona fide payment means payment of reasonable market value – the payment bears a reasonable relationship to the market value of the services performed or the goods or facilities provided.

Section 8 issues come up in a variety of ways for banks and mortgage lenders. For example, a mortgage loan originator might want to lease an office or rent a desk in a real estate agent's office. Or, a loan originator might want to advertise alongside a real estate agent or participate in a marketing event with a real estate agent and share or pay the advertising and marketing expenses. In arrangements where services are being provided by or for someone that might also be a referral source, the regulators generally look at the big picture. Since a referral is non-compensable and since only bona fide fees may be paid for settlement services actually provided or performed, any payment, including any payment to a third party for the expense of another person, that exceeds the market value of the services actually provided will be presumed to be payment for referrals.

As an example, assume a real estate agent sponsors an open house for other agents. Your bank has been asked to pay for the refreshments, even though the bank does not plan to attend or even advertise its services. Would this be a violation? The answer is yes! By paying for the cost of the refreshments and absorbing the expense the real estate agent would otherwise have to pay, the bank has given the real estate agent a "thing of value" which likely would be consideration for the referral of business since there appears to be no other business purpose for the payment. Both the bank and the real estate agent may be liable for a RESPA violation since both paying and receiving a referral fee is prohibited. On the other hand, if the bank were to attend the open house and make a presentation or otherwise market its services, the payment may be lawful under RESPA since the bank is paying the, presumably reasonable, costs of marketing its own services.

Another area which presents substantial risk to mortgage lenders for Section 8 violations is marketing services agreements. Marketing services agreements often involve providers of settlement services in a mortgage loan transaction, such as a lender, real estate agent or broker, or a title company and may also include third parties, such as membership organizations. These marketing services agreements are generally framed as payments for advertising or promotional services, but in some cases may be disguised compensation for referrals. MSAs were the subject of CFPB Compliance Bulletin 2015-05. Essentially, the Bureau said it pretty much viewed all MSAs with suspicion saying many are designed to avoid the prohibition on payment of referral fees.

Section 8 violations have been the subject of numerous CFPB enforcement actions, and these actions illustrate how issues may arise. For example, some of the earliest enforcement actions by the Bureau were against MGIC and other private mortgage insurance companies over captive reinsurance arrangements where the mortgage lender, or an affiliate of the lender, re-insured a portion of the PMI company's liability and received a portion of the PMI premium. One of those lenders was PHH Corp. which subsequently appealed the Bureau's findings and challenged the constitutionality of the CFPB. While the Bureau's organization was found to be constitutional, the federal appeals court hearing the case overturned the Bureau's interpretation of RESPA and found that captive mortgage reinsurance arrangements did not violate RESPA as long as the captive reinsurer charged no more than the reasonable market value of the reinsurance, even if referrals were also involved.

Another example involved a homebuilder who formed a mortgage company jointly owned by the homebuilder and a bank. The homebuilder referred his customers to the mortgage company which, ostensibly, was the originator of the mortgage loans. According to the Bureau, however, the mortgage company was a sham entity, the bank did all the work, and kickbacks were passed through to the homebuilder in the form of profit distributions and payments under a "service agreement." Similar enforcement actions have been brought involving title agencies structured as joint venture type arrangements between title insurance companies and lenders or between closing attorneys and realtors where the joint venture title agency ostensibly issues the title policy and collects some part of the premium, but the Bureau found the agency was a sham and the substantive work of issuing the title policy was performed elsewhere. The profit distributions and payments to the so-called "owners" were found to be disguised kickbacks.

Other examples include payment of inflated lease payments by a mortgage company to a bank for renting office space within the bank; payment of title insurance commissions to individuals who were found not to be bona fide employees of the title insurance agency; payment by a mortgage lender of fees to a veteran's organization for lead generation and licensing services under a marketing services agreement whereby the lender was named as the "exclusive lender" of the veteran's organization; and payment by a title insurance agency of the cost of providing marketing leads and marketing letters for bank loan officers.

At the quarterly meeting we will cover prohibitions under RESPA, exceptions to prohibitions, and walk through examples of what a bank can and cannot do re: federally related mortgage loans. We want you to be <u>ready</u> for 2020!

<Patsy Parkin>

UDAAP AN ONGOING CONCERN

Section 5 of the Federal Trade Commission Act prohibits "unfair or deceptive acts or practices in or affecting commerce." The prohibition applies to all persons engaged in commerce, including banks. Under section 8 of the Federal Deposit Insurance Act, each of the federal bank regulators has the authority to take appropriate enforcement action against the institutions it regulates when unfair or deceptive acts or practices are discovered. In addition, Dodd-Frank gave the CFPB the authority to issue rules to identify unfair, deceptive or abusive acts or practices in connection with any consumer financial product or service and to take enforcement action against covered persons and service providers. Dodd-Frank also gave state attorneys general the authority to enforce the Bureau's rules on unfair, deceptive or abusive acts or practices.

A number of enforcement actions for UDAAP violations have been brought by the CFPB, federal bank regulators and state AGs, and examiners continue to raise UDAAP concerns about a variety of bank products and services including add-on products, overdraft protection, rewards programs, mortgage servicing, and others. In addition, we have seen UDAAP issues raised recently in civil litigation concerning items such as overdraft fees, posting and order of payment of checks and processing of debit card transactions, and account balance reporting.

Of course the big problem with UDAAP compliance is that what constitutes an unfair, deceptive or abusive practice is not specifically defined. The law and regulatory guidance uses broad and somewhat vague terminology, and applying the law to specific products or situations can involve a lot of subjective judgment and interpretation. It's a little like the famous quote attributed to U.S. Supreme Court Justice Potter Stewart in a 1964 obscenity case when he tried to explain pornography and said (and I am paraphrasing), I shall not attempt to define it further, "but I know it when I see it."

The term "unfair" is defined in Dodd-Frank as an act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and the injury is not outweighed by countervailing benefits to consumers or to competition. The term "deceptive" is not specifically defined by statute, but is defined in the CFPB's examination manual as a material misrepresentation, omission, act or practice that misleads or is likely to mislead a consumer, provided the consumer's interpretation is reasonable under the circumstances.

Dodd Frank also introduced the term "abusive" and defined it as an act or practice that either: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service, or (2) takes unreasonable advantage of either: (i) a lack of understanding on the consumer's part of the material risks, costs or conditions of a product or service, (ii) the inability of the consumer to protect his or her own interests in selecting or using the product or service, or (iii) the reasonable reliance of the consumer on the bank or other covered person to act in the consumer' interest. The Bureau has not yet undertaken to further define "abusive" through rulemaking. In an April 17 speech at the Bipartisan Policy Center, CFPB Director Kathleen Kraninger said the Bureau will convene a symposia series on a variety of topics during the coming year, one of which will be around clarifying the meaning of abusive acts or practices. In last fall's regulatory agenda, the Bureau said it was considering whether rulemaking or other activities would be helpful to clarify the meaning of abusiveness, so we will be watching for developments.

In the meantime, a review of the basic law and a look at specific enforcement actions and issues being raised in examinations may provide some insight into the types of practices that may be considered to be UDAAP violations. The following are some examples for both deposit products and services as well as for loans.

In the CFPB's 2019 Winter Supervisory Highlights, it was noted that examiners had recently found that some institutions were unfairly or deceptively disclosing the time at which certain payments made through the bank's online bill pay service would be posted. For example, the institutions at issue disclosed that the payments made via on-line bill payment services would be debited on or after a certain date selected by the customer. However, in instances in which a paper check was sent, the payment was sometimes debited earlier than the selected date which was the date on which the check was presented for payment. The CFPB's opinion on this is that the failure to disclose the possibility of earlier payment is unfair and deceptive because the customer was under the impression that payments made through the online bill payment services would be withdrawn no earlier than the date selected by the customer and some customers incurred overdraft fees resulting from this practice.

As we discussed at the last quarterly meeting, many lawsuits have been filed alleging improper overdraft practices regarding how the balance used in determining a customer's overdraft status is disclosed and the language used in the model form for opt-in for the payment of one-time debit card and ATM transactions. Complaints have also been brought against banks and credit unions regarding excessive overdraft fees incurred when a customer has enough money in his or her account when a transaction is authorized but subsequent transactions reduce the amount in the account before the transaction is posted and an overdraft resulted and a fee incurred even though that transaction did not originally create the overdraft status in the customer's account.

Other banks have been accused of the following deceptive overdraft practices: utilizing deposit account opening procedures that did not properly allow a consumer to read overdraft opt-in notices, improper disclosure of overdraft fees, leading consumers to believe opting- in for the payment of one-time debit card and ATM transactions was a requirement to open the account, and offering incentives for bank employees to encourage consumer opt-ins for those transactions. In 2018, the CFPB proposed a settlement with a bank regarding the marketing and sale of its overdraft products and services. Specifically, the CFPB claimed that this bank made it seem that incurring fees for overdrafts was mandatory for new customers when opening an account.

It has also recently been brought to our attention that examiners are closely reviewing "fresh start" loan programs that are typically offered to consumers as a means of repaying overdrafts and rebuild credit. The concerns about fresh start programs are how and when disclosures are made to consumers; whether or not the program is only offered to those who have opted-in to the bank's overdraft program; whether overdraft protection becomes available again once a loan is booked; after the loan is paid, if the overdraft protection will be made available to the consumer and how that is monitored; and how and at what time a customer is offered a fresh start loan and how eligibility is monitored.

There have been many cited UDAAP violations related to mortgage servicing activities. Some of these are noted in the CFPB's 2019 Winter Supervisory Guidance. First, some servicers were found to have charged late fees in excess of the amount disclosed to consumers. The example provided was that certain FHA promissory notes permit service charges of 4% of the overdue principal and interest, but in reality, servicers charged 4% of the overdue principal, interest, taxes and insurance. These overcharges were the result of programming errors on servicing platforms, but the examiners nonetheless found the mortgage servicers in violation because consumers could not have avoided the overcharges.

In addition to the late payment overcharges, examiners found that some mortgage servicers were not properly cancelling private mortgage insurance upon request. In these instances, examiners found that such cancellation requests were declined because the borrower was incorrectly informed that they had not yet reached 80% LTV according to relevant amortization schedules. However, examiners found that these borrowers had actually reached the 80% LTV because they had made extra principal payments. Examiners also concluded that some mortgage servicers were misrepresenting the actual reasons that PMI cancellation wasn't available in a manner that wasn't reasonably understandable or properly communicated to the consumer.

Other issues related to mortgage servicing include: failure to properly place consumers in permanent modifications when he or she has properly completed the trial modification period leading to an unnecessary increase in interest and fees that would not have otherwise been accrued; charging consumers more than the amounts authorized by the loan modification agreement as a result of data entry errors; and misrepresentations made prior to and during the foreclosure process when a borrower had agreed to a loss mitigation offer but foreclosures were improperly conducted despite the agreements being in place.

Examiners also found issues with automobile loan servicers as reported in the CFPB's Summer 2018 Supervisory Highlights. For instance, it was found that insurance proceeds from a total vehicle loss were incorrectly applied to the loan. In these instances, the note required that total vehicle loss payments should be applied as a one-time payment to the loan with any remaining balance to be collected as per the regular billing cycle for that loan. However, the servicers sent billing statements that incorrectly indicated that the borrower did not need to make a monthly payment until a date much further in the future. The reality was that a payment was due the next month as usual, and the notices were inconsistent from other loan documents and confusing or misleading to the consumer.

Improper repossessions were also reported in the same Supervisory Highlights. There, examiners found that some vehicles had been repossessed after the repossession should have been cancelled. In those instances, the servicer of the loan had offered an extension agreement either cancelling the repossession or allowing for a forbearance period and the repossession cancellations were not completed timely; therefore, the vehicles were improperly repossessed which the CFPB found to cause substantial injury to the affected consumers and unfair.

Advertising practices of financial institutions have also been criticized. In one 2018 example, the CFPB settled with a lender for failing to properly disclose finance charges associated with automobile secured loans. This lender's advertisements did not include the APR and other information required by TILA. A judgment of over one million dollars was entered against this institution, and it also had to pay out over $500,000 to affected customers.

The agencies have also taken issue with disclosures of the terms and conditions of add-on products; specifically regarding automobile loans and credit cards. Failure to properly market, disclose and advertise such products has cost banks and other institutions millions of dollars recently.

The issues briefly summarized in this article are just the tip of the UDAAP iceberg. There are many more examples available. In order to ensure that your institution will not be caught in one of these practices- whether intentional or not-all of your bank's disclosures and fee schedules should be reviewed to ensure that what a customer is told upfront is actually the bank's practice and that all fees are charged properly as disclosed in every instance. All disclosures and notices should also be reviewed for consistency. Further, the bank should review its disclosures to ensure that they are consistent with its actual practices as well as all system and platform settings.

<Memrie Fortenberry>

REGULATORY WINDS ARE CONSTANTLY CHANGING

Just like April weather, the regulatory winds are constantly changing. The direction and intensity varies frequently. We may have a light breeze one day and strong winds with dark clouds overhead the next. With the changes in leadership at the federal banking agencies, many in the industry believe that, with a greater sense of reason installed at the top, the seasons have changed in banking and regulatory compliance and sunny spring-like weather has arrived. Some support for this way of thinking can be found in some recent actions of the CFPB and in a recent speech by Kathleen Kraninger, President Trump's appointee to head the Bureau.

For example, in June of last year, Acting CFPB Director Mick Mulvaney dismissed further proceedings against mortgage lender PHH Corp. You will remember that the Bureau brought an enforcement action against PHH in 2014 alleging that its captive mortgage insurance business violated the RESPA Section 8 prohibition against kickbacks despite prior HUD interpretations approving the practice. The Bureau applied its new interpretation of Section 8 retroactively and ordered PHH to pay $109 million in disgorgement. PHH appealed and challenged the constitutionality of the Bureau, the retroactive application of the Bureau's new interpretation of Section 8, and the Bureau's imposition of penalties for activity occurring beyond the RESPA 3 year statute of limitations. Ultimately, the DC Court of Appeals found the Bureau to be constitutional but ruled in favor of PHH on the other issues. The appellate court clearly agreed that the Bureau exceeded its authority and pushed the limits of enforcement much too far.

The Bureau is also reconsidering some of its past rulemaking. In February, the Bureau proposed to rescind some of the provisions of its 2017 rule on payday, vehicle title and high cost installment loans. Specifically, the Bureau proposed to rescind the verification of ability to pay requirement for payday, single-payment vehicle title, and longer-term balloon payment loans on the basis that the requirement would reduce access to credit and competition in states that have determined that it is in their residents' interests to be able to use such products. The Bureau also proposed to delay the August 19, 2019, compliance date for the mandatory underwriting provisions of the 2017 final rule to November 19, 2020.

In April, the Bureau issued a Request for Information on its Remittance Rule which governs consumer international money transfers. The Bureau is specifically seeking information to determine whether to propose changing the rules to change the safe harbor for coverage based on a threshold number of remittance transfers or to create a small institution exception. The Bureau is also asking for information about the upcoming July 21, 2020, expiration of a temporary exception that allows insured depository institutions to estimate the exchange rate and certain fees in their consumer disclosures.

Also in April, the Bureau announced changes to its policies regarding Civil Investigative Demands (CIDs). Dodd-Frank authorizes the Bureau to issue investigational subpoenas known as CIDs when looking into potential violations of law. A CID is usually the way an enforcement action is begun. In the past, Bureau CIDs have been extremely broad and have characterized by some as fishing expeditions. Under the Bureau's updated policy, CIDs will provide more information about the potentially applicable provisions of law that may have been violated.

In a speech late last year before the Bipartisan Policy Center, a Washington, D.C. think tank founded by former Senate Majority Leaders Howard Baker, Bob Dole, George Mitchell, and Tom Daschle, Ms. Kraninger outlined her vision for the Bureau. She signaled a continuing shift in emphasis away from using enforcement actions as a means of regulating and said the Bureau should use all of the tools available to it, including education, regulation, supervision, and enforcement, to focus on prevention of consumer harm.

She indicated that enforcement should be aimed at bad actors. It should proceed carefully and purposely to ensure a fair and thorough evaluation of the facts and the law. Concerning rulemaking, Ms. Kraninger said that regulations are general standards and should not be articulated on a case by case basis through enforcement actions. Rulemaking should involve input from all stakeholders and the CFPB must acknowledge that the costs imposed on regulated entities absolutely affects access to and availability of credit to consumers.

She emphasized that supervision and examination is the heart of the agency but that it was also important to keep in mind that the Bureau was not the only agency supervising any given entity. She spoke about how the Bureau should measure outcomes. In the past, the Bureau has measured success by things like the number of complaints it handled, the number of enforcement actions it brought and how much money it recovered. If the Bureau is successful in fostering a culture of compliance and preventing harm, you would expect those numbers to go down which, she said, demonstrates those outputs are an incomplete measure of success. Finally, she announced a series of symposia to facilitate a discussion by experts on a variety of topics related to the Bureau's mission, the first of which will be around clarifying the meaning of what constitutes abusive acts or practices under Dodd-Frank. While the statute defines abusive in basic terms, the Bureau has the authority to write regulations and some clarification particularly with regard to reasonable standards may be useful, according to Ms. Kraninger.

All of these are positive developments. While it appears the winds have changed direction and are considerably more favorable than in the past, we know they will change direction and intensity again in the future. This is no time to rest or even slow down. It is important for bank management to keep the proper perspective and be prepared. Examiners will continue to examine and write reports, and as discussed elsewhere in this report, they will find new things to emphasize. Perhaps one of the best things we can do is stick with the basics. Concentrate on your CMS including board and management oversight, monitoring, compliance reviews, and training. Fair lending and BSA will always be high priority considerations. Keep your umbrella handy and an eye out for weather changes.

<Cliff Harrison>

MS LEGISLATURE CONCLUDES SESSION

The Mississippi state legislature recently concluded its 2019 regular session. Being an election year, the session was relatively quiet. While a number of bills were introduced that touched on banks and banking, only a few survived the process and became law. Here is a brief summary of a couple of bills that may be of interest to you.

S.B. 2828 – The Mississippi Guardianship and Conservatorship Act becomes effective January 1, 2020. The product of a commission created by the Mississippi Supreme Court, this bill overhauled the state's outdated and overlapping laws on guardianships and conservatorships. For the first time, the law draws a clear distinction between a guardian of the person with authority to make decisions regarding an adult or minor ward's care and welfare, and a conservator with authority to make decisions regarding the property or financial affairs of an adult or minor ward. The bill makes a few changes to the statutes dealing with conservatorship bank accounts and with payable on death accounts where the surviving beneficiary is a minor.

As under current law, a conservator would be able to avoid having to post a surety bond if the conservatorship funds are deposited in a FDIC insured bank account to remain on deposit until further order of the court. The statute provides a model form of acknowledgment of receipt by the depository bank which, helpfully, does not include a waiver of service of process. It merely acknowledges receipt of the funds, receipt of a certified copy of the court order, and the fact that the order provides that the deposited funds shall remain on deposit until further order of the court. The law also provides that a financial institution that substantially complies with the provisions of the statute when acting as a depository of conservatorship funds is not liable to any person for so acting except for willful default, gross negligence or malfeasance.

The bill also makes a small change to the existing statutes on POD accounts for situations where the surviving beneficiary is a minor under the age of 16. The existing law provides that in that situation, the funds may be paid to the minor POD beneficiary once that person reaches age 16 or it may be paid to the legal guardian of the minor, if one. If no guardian has been appointed, then the current law allows up to $25,000 to be paid to some other person for the benefit of minor with chancery court approval. The revised law would allow payment in the situation where the minor is under age 16 and has no legal guardian of up to $25,000 to a person who has care and custody of the minor, a custodian under the Uniform Transfers to Minors Act, or to a financial institution as a deposit solely in the name of the minor. Curiously, the new law makes no mention of paying the funds to a conservator for the minor. A bank may need to consult with its attorney if faced with the situation of a minor POD beneficiary under age 16.

S.B. 2817 – An act to clarify the open-end credit parity statute, becomes effective from and after passage. Last year, the legislature adopted some changes to the existing parity law that would give state chartered and domiciled banks parity with out-of-state banks when extending open-end credit. Under that law, a state bank extending open-end credit could charge interest rates, fees and charges at rates and amounts equal to or less than those amounts charged by financial institutions domiciled in other states when extending credit to their Mississippi customers. The idea was to allow Mississippi banks to charge rates and fees on credit cards and other open-end accounts at the same level being charged by out-of-state banks and imported to their Mississippi customers. Unfortunately, there was a typo in the numbering of the subsections used in the 2018 bill, and there was some concern that the additional language regarding open-end credit parity could be read as limiting the meaning of the general parity law which gives state banks parity generally with national banks located in the state. That typo was corrected in the 2019 bill with one other small clarification. The 2018 bill stated that in order for a bank to take advantage of the open-end credit parity law, the bank must "set forth" the rates and fees to be charged, the state where those rates and fees are permissible and the identity of one or more financial institutions charging those rates and fees, but it did not specify how or where those items were to be "set forth." The 2019 bill clarifies that those items of information must be set forth in the records of the bank taking advantage of the parity law. Presumably, records of those items would need to be preserved by a bank taking advantage of the parity provision indefinitely to support the basis for any fees or charges that might exceed what would otherwise be permissible under the Mississippi usury statutes for revolving credit.

A number of other bills were proposed that could have made helpful changes to laws on garnishments, premises liability, probate and estates, geospatial drawings and surveys, and prevention of financial abuse of vulnerable adults, but none of those survived the legislative process.

<Cliff Harrison>

MSRCG QUARTERLY MEETING TO BE HELD ON MAY 21, 2019
NOTE THE NEW LOCATION!

The MSRCG will hold its Quarterly Meeting on May 21, 2019, at **Memphis Botanic Garden** in the Goldsmith Room located at 750 Cherry Road, Memphis, Tennessee. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m. Directions to Memphis Botanic Garden can be found by going to their website (https://www.memphisbotanicgarden.com/) and clicking directions and parking at the bottom right corner of their home page.

The May meeting will feature a presentation on the new private flood insurance regulations, a review of UDAAP laws and recent exam concerns and enforcement actions, and a discussion of RESPA Section 8 and kickbacks and referral fees. Patsy and Lisa will also conduct TRID training and discussion of common errors found in compliance reviews. And, we will cover recent Reg. CC changes and some other compliance developments we want you to be aware of.

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 to Liz Crabtree no later than Tuesday, May 14, 2019, so that arrangements for lunch can be finalized. We look forward to seeing you there.

<Cliff Harrison>

MRCG QUARTERLY MEETING
TO BE HELD ON MAY 23, 2019

The MRCG will hold its Quarterly Meeting on May 23, 2019, at the Mississippi Sports Hall of Fame & Museum Conference Center, 1152 Lakeland Drive, Jackson, Mississippi. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m..

The May meeting will feature a presentation on the new private flood insurance regulations, a review of UDAAP laws and recent exam concerns and enforcement actions, and a discussion of RESPA Section 8 and kickbacks and referral fees. Patsy and Lisa will also conduct TRID training and discussion of common errors found in compliance reviews. And, we will cover recent Reg. CC changes and some other compliance developments we want you to be aware of.

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 to Liz Crabtree no later than Thursday, May 16, 2019, so that arrangements for lunch can be finalized. We look forward to seeing you there.

<Cliff Harrison>

MRCG-MSRCG COMPLIANCE CALENDAR 09/07/2018 – HMDA Reg. C partial exemptions for reporting effective	05/24/2019 – Effective date for Sec. 302 of EGRRCPA re: reporting of veterans medical debt and requiring nationwide credit bureaus to provide free credit monitoring for active duty servicemembers.
09/17/2018 – Reg. P exception to annual privacy notice requirement effective	07/01/2019 – Private flood insurance rule effective
09/21/2018 – Effective date for Sec. 301 of Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) requiring nationwide credit bureaus to provide free security freezes on consumer credit reports	07/18/2019 - MRCG-MSRCG Joint Steering Committee Meeting
10/01/2018 – Reg. Z TRID clarifications and technical amendments mandatory compliance date	08/19/2019 – Mandatory compliance date for CFPB Rule on Payday, Vehicle Title and High Cost Installment Loans (Note: CFPB has proposed changes including extending the compliance date to 11/19/2020.)
01/01/2019 – Revised HMDA data reporting begins	08/22/2019 - MRCG Quarterly Meeting
02/05/2019 – Comment period on proposal to raise residential real estate appraisal threshold expires	08/27/2019 - MSRCG Quarterly Meeting
02/08/2019 – Comment period on proposed Reg. CC changes expires	09/19/2019 - MRCG-MSRCG Joint Steering Committee Meeting
04/01/2019 – Reg. E and Reg. Z Prepaid Accounts rule effective	11/19/2019 – MSRCG Annual Meeting
04/18/2019 - MRCG-MSRCG Joint Steering Committee Meeting	11/21/2019 – MRCG Annual Meeting
05/21/2019 - MSRCG Quarterly Meeting	11/24/2019 – Effective date for Sec. 106 of EGRRCPA re: job change relief for mortgage loan originators
05/23/2019 - MRCG Quarterly Meeting	