



# Legislation & Regulation Update

**TENNESSEE BANKERS ASSOCIATION**

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## **HAPPY NEW YEAR**

For the banking industry, the tumultuous events of 2009 are in the past and many economists are predicting a somewhat better, if not great, 2010. The banking reform legislation in Congress passed the House in late December and the Senate Banking Committee, chaired by Chris Dodd (D-CT), will begin to take up the legislation when they return on January 19. However, all indications are that a Senate bill will be significantly different from the House bill and will likely be more moderate. The Senate Republicans are united against creation of a Consumer Financial Protection Agency as are some moderate Democrats. Negotiations in the committee continue and Chairman Dodd's recent announcement not to seek reelection may remove some political pressure from the process.

TBA leadership and staff will be participating in a fly-in in late January to meet with Tennessee senators and their staff to express our concerns. Bankers should watch the process carefully and be prepared to send letters as needed. The outpouring of more than 250,000 calls and letters in 2009 was a significant achievement for the industry as it had a tremendous impact on the House and the Senate and showed our commitment and concern over the proposals.

Tennessee General Assembly. At the state level, the Tennessee General Assembly convenes next week on Tuesday, January 12, which is the scheduled date for the regular session. As the press has extensively reported, Governor Bredesen has called a special session for the same day to enact education reforms which would qualify Tennessee to apply for federal "Race to the Top" funding. Discussions and negotiations with the TEA and other critical industries are already underway. Because of the accelerated time frame, committees are already scheduled to meet on Monday, January 11, to get a head start on the special session since any legislation would have to be passed and the state's application submitted no later than Tuesday, January 19.

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The regular session convenes at noon on January 12, and the special session convenes at 4:00 p.m. At 5:00 pm, the Governor will make a presentation to a joint convention of the special session outlining his education reform plan.

The special session is anticipated to last up to two weeks, but could last longer. In addition to the first week's dedication to K-12 reforms, the Governor has suggested additional reforms for higher education and may include authority for the special session to consider workers' compensation. There is an effort to delay requiring small businesses and contractors to carry workers' compensation insurance.

Once the special session concludes, the regular session will resume. This means that the cutoff date for filing bills will be delayed by two to three weeks. At this time, very few bills have been pre-filed and the scope of issues the banking industry will face has not yet been determined.

### **SENATE BANKING CHAIRMAN DODD ANNOUNCES RETIREMENT**

As reported above, it's a new year and with that comes what many in the banking industry (well, let's be honest, probably *everyone*) will consider good news... Christopher Dodd (D-Conn) will not be seeking reelection in November. Although Dodd will continue to lead the committee this year as it drafts landmark financial reform legislation, some believe his upcoming departure will help create a bill with more Republican support. Most importantly, it may free Dodd from pressure to create a new Consumer Financial Protection Agency (CFPA).

Sen. Tim Johnson (D-SD), a longtime ally of community banks, is expected to replace Dodd as Senate Banking chairman if the Democrats retain a Senate majority following the November elections.

Congressman Roe Opposes the Financial Reform Legislation. In a recent E-Newsletter, Congressman Phil Roe (R – Dist. 1) spoke out against the financial reform legislation recently passed in the House and now being considered in the Senate. The Congressman was supportive of the banking industry and harshly criticized nearly all major aspects of the legislation, including creating the new CFPA, to be lead by a single czar; allowing for “bailout authority” by assessing taxes on financial firms; and expanding the power of the Federal Reserve to oversee the “systemically risky” firms. To read his complete newsletter, please go to his website at <http://www.roe.house.gov>.

### **RESPA RULES TAKE EFFECT – FDIC ISSUES GUIDANCE**

The FDIC released guidance reminding bankers that HUD's amendments to RESPA took effect on January 1. The amendments revise the Good Faith Estimate form, expand the HUD-1 Uniform Settlement Statement, and require reimbursement to borrowers within 30 days of settlement of any overcharges outside permitted tolerances. The amended rule also provides that inadvertent or technical errors on the HUD-1/1A will not be deemed a violation of RESPA if a revised HUD-1/1A is provided to the borrower within 30 days of settlement.

Both ABA and ICBA have urged HUD to suspend RESPA reforms and work jointly with the Federal Reserve under the Truth in Lending Act (TILA) to improve disclosures. Both groups maintain that RESPA and TILA disclosures should complement each other to avoid confusion and potential harm. [Read RESPA Guidance.](#)

### **NATIONAL MORTGAGE LICENSING**

As most of you are aware, the recently adopted SAFE Act requires employees of banks and their subsidiaries who act as residential mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry (NMLS). However, the registration requirement does not take effect until the federal banking regulators issue a final rule implementing the SAFE Act. The FDIC Board has approved a final draft, but it has not been published in the *Federal Register*, thus, it is not yet final.

NMLS is being modified so it can accept these registrations. Once the rule becomes final, employees will have a 180-day grace period to register with the new system (to be renamed the Nationwide Mortgage Licensing System and Registry) without being subject to sanctions if they originate loans prior to completing registration.

Although a final rule has not been issued yet, the following is a link to the registration system: <http://mortgage.nationwidelicencingsystem.org/fedreg/Pages/default.aspx>. Please note, the link indicates that registration is not yet required for bank employees.

### **CONSUMER LOAN DELINQUENCIES FALL IN 3<sup>RD</sup> QUARTER**

And now for a little more good news...consumer loan delinquencies fell in seven loan categories in the third quarter of 2009, marking the first time since 2007 that so many loan categories declined. The composite ratio, which tracks eight closed-end installment loan categories, fell 12 basis points to 3.23 percent of all accounts -- compared to 3.35 percent of all accounts in the previous quarter. Bank card delinquencies fell 24 basis points to 4.77 percent of all accounts.

ABA's Chief Economist, Jim Chessen, attributed the lower delinquency rates to a combination of slower job losses, consumers getting their financial houses in order, and banks writing off bad loans. "Banks are putting losses behind them, setting the stage for expanded lending to consumers as the economy recovers," he said. But he also cautioned that the road ahead remains bumpy with many people unemployed and family budgets stretched to their limit.

### **CITY OF MEMPHIS AND SHELBY COUNTY SUE WELLS FARGO**

The City of Memphis and Shelby County have sued Wells Fargo alleging "reverse redlining." The suit was filed on December 30, 2009. Among the allegations is that Wells Fargo engaged in a pattern of practice of targeting African American neighborhoods in Memphis and Shelby County for deceptive, predatory, or otherwise unfair lending practices. The practice has caused an excessive, disproportionately high number of foreclosures in African American neighborhoods in Memphis and Shelby County. These practices, as well as foreclosures, have inflicted significant

and substantial harm in the minority neighborhoods and continuing financial harm to Memphis and Shelby County. The lawsuit seeks an undetermined amount of both compensatory and punitive damages, and attorneys' fees.

This case is similar to cases previously filed by the *City of Baltimore vs. Wells Fargo* (Case No. L08-CV-062 (D Maryland)) and *City of Birmingham v. Citigroup, Inc, et. al.* (CV-09 BE-467-S (N.D. Ala, August 19, 2009)).

A U.S. District Court judge on Wednesday granted Wells Fargo & Co.'s request to dismiss the 2008 lawsuit filed by Baltimore alleging the bank's lending practices led to foreclosures that harmed the city. Baltimore had accused Wells Fargo Bank and Wells Fargo Financial Leasing of targeting minority borrowers for bad loans which allegedly led to a disproportionately high foreclosure rate and vacancies in black or Latino neighborhoods.

Judge Frederick Motz wrote in his opinion that a causal connection between the bank's alleged misconduct and the city's claim of damages from a decline in home values and a loss of tax revenue was "not plausible." "The alleged connection is even more implausible when considered against the background of other factors leading to the deterioration of the inner city, such as extensive unemployment, lack of educational opportunity and choice, irresponsible parenting, disrespect for the law, widespread drug use and violence," Motz said.

Comparable lawsuits in Cleveland and Birmingham that sought compensation for alleged foreclosure losses also have been dismissed.

The Memphis case had been under consideration for at least a year. The TBA was contacted in 2008 when the county commission was requested to authorize the suit and provide initial funding for the complaint. At that time, the proposal to the county commission was to bring suit against every mortgage lender in Shelby County. The current suit is obviously a narrowed approach to that which was initially proposed since it is brought against only Wells Fargo.

## **2010 CONGRESSIONAL CANDIDATES**

The recent announcements from Bart Gordon (D-Dist. 6) and John Tanner (D-8) that they will not be seeking reelection in 2010 made the 2010 Congressional races a lot more interesting, and a lot harder to keep track of who's running, and who's not. For anyone following the ever-changing list of candidates, here is an up-to-date list, subject to change, of course.

### **District 1:**

#### **Phil Roe (R)**

David Davis (R), Johnson City, businessman

### **District 2:**

#### **John Duncan (R)**

No serious opposition

### **District 3:** Zack Wamp (R), running for Governor

Robin Smith (R), Hixson, Former State Party Chairman

Chuck Fleischmann (R), Chattanooga, lawyer

Art Rhodes (R), Cleveland, investment fund manager  
Tim Gobble (R), Bradley County Sheriff  
Tommy Crangle (R), Chattanooga, engineer

**District 4:**

**Lincoln Davis (D)**

Scott DesJarlais (R), Marion County, physician

**District 5:**

**Jim Cooper (D)**

No serious opposition expected

**District 6:** Bart Gordon (D) – retiring

Sen. Jim Tracy (R – Shelbyville)

Lou Ann Zelenik (R), Former Rutherford County GOP Chairman

Sen. Diane Black (R – Gallatin)

Dave Evans (R), Wartrace, retired Federal employee

Kerry Roberts (R), Springfield, accountant

Gary Mann (R), lives outside the District, shop owner

**District 7:**

**Marsha Blackburn (R)**

No opposition expected

**District 8:** John Tanner (D) – retiring

Steven Fincher (R), Crockett County, farmer and gospel singer

George Flinn (R), Shelby County Commissioner (potential candidate)

Ron Kirkland (R), Jackson, physician

John Farmer (R), Jackson, ran against Congressman Tanner in 2006

Sen. Roy Herron (D – Dresden)

Luther Mercer II (D), works at UT Martin with the Black Student Association

William Godwin (D), law student

**District 9:**

**Steve Cohen (D)**

Mayor Willie Herenton (D), Memphis