



# COMPLIANCE BRIEF

September 2022



- FDIC Technical Corrections to Part 338 of FDIC Rules
- NACHA Updates
  - Third Party Sender Rules effective Sept. 30, 2022
  - COVID Provisions End Oct. 1, 2022
- Latest from CFPB on Unfair Practices
- FinCEN Beneficial Owner Registry Final Rule

## Fair Housing Act Updates



- Applicable **only** to FDIC-supervised banks
- [August 8, 2022 Federal Register](#) Technical Correction
- FDIC consolidated Consumer Response Center and the Deposit Insurance Section into one office, now titled, “National Center for Consumer and Depositor Assistance”
  - Changed contact web address to <https://ask.fdic.gov/fdicinformationandsupportcenter>
- 338.4(b) updated to reflect changes (FHA poster language)
  - **FDIC NOT requiring FHA poster updates at this time!**
  - Further corrections expected in near future & FDIC will require FHA poster updates at that time.

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## New NACHA Rule

- Defines a Nested Third-Party Sender & provides for “chain of agreements” and responsibilities in Nested TPS arrangements
  - A “Nested Third-Party Sender” is a Third-Party Sender that has an agreement with another Third-Party Sender to act on behalf of an Originator, and does not have a direct agreement with the ODFI
- ACH Agreement Requirements
  - TPS Origination Agreements must address whether TPS can have Nested TPS
  - If TPS can have Nested TPS, agreement must “push down” requirement for Origination Agreement between TPS & Nested TPS
  - Does NOT limit the number of levels in a Nested TPS agreement
  - Applicable to ACH Origination Agreements entered into on or after Sept. 30, 2022

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## New NACHA Rule

- Requires ODFI to identify all TPS allowing Nested TPS in Nacha’s Risk Management Portal
  - March 31, 2023 deadline for adding existing TPS arrangements
  - For TPS arrangements entered into on or after Sept 30, 2022:
    - Within the latter of 30 days of transmitting the first Entry,
    - Or 10 days of the ODFI becoming aware of the Nested TPS
- TPS Risk Assessment Requirement
  - Rule now expressly states that a TPS, whether or not it is Nested, is required to conduct a Risk Assessment
  - March 1, 2023 deadline to complete Risk Assessment
- [NACHA Summary of requirements](#)



## NACHA COVID Relief Provisions End Oct 1

Rule Provision	Change
Written Statement of Unauthorized Debit (WSUD)	Will require signature or similar authentication (E-signatures permitted)
Delivery of Record of Authorization, Source Document, WSUD	Returns to 10 banking days
Required response time to NACHA rules enforcement process	Returns to 10 banking days
POP Entry Authorization	Will again require signature authorization
POS Authorization	Will require signed or similar authentication if customer is not required to enter PIN

Source: [NACHA Operations Bulletin 1-2022](#)

## Insufficient Information Security = Unfair Practice

- [Sept. 6 Federal Register](#) CFPB Circular 2022-4
  - Inadequate data security may be “unfair” to consumers
  - Actual injury is NOT required to be deemed “unfair”
- Conduct that could trigger UDAAP Liability
  - Failure to implement multi-factor authentication for employees or offering MFA for consumers
  - Inadequate password management policies and practices and/or failing to have processes in place
  - Failure to install routine updates to systems, software, and code or failure to do updates when notified of a critical vulnerability

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## Final Rule for Beneficial Owner Registry

- Issued Sept. 29 by FinCEN
- [Rule Fact Sheet](#)
- Requires certain companies to register beneficial owner, person w/ substantial control & company applicant w/ FinCEN
- Effective date: January 1, 2024
  - Existing companies have 1 year to register (by 1/1/ 2025)
  - New companies must register w/in 30 days of creation
- **No impacts on bank Beneficial Owner Programs**
  - Phase III rulemaking will address bank programs

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**2022 IBA Compliance Conference**  
November 15-16, 2022  
The Meadows Events Center at Prairie Meadows, Altoona

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  - 844-REGS411 (or 844-734-7411)

