



# COMPLIANCE BRIEF

October 2022

## Today's Topics:

- HMDA Closed-end Threshold Court Ruling
- New Guidance from IDOB
- CFPB Continues Deposit Fee Criticisms
- A few quick reminders





## HMDA Closed-end Threshold Court Ruling

- Federal Court of District of Columbia vacated portion of 2020 HMDA rule decreasing closed-end reporting threshold from 100 down to 25
  - CFPB was acting w/in its authority
  - But failed to support its rationale for decrease, making the decrease “arbitrary and capricious”
- **CFPB has yet to comment**
  - Will NOT likely appeal ruling
  - WILL likely decrease threshold back to 25
  - No set timeline but possible as early as January 1, 2023



## POSSIBLE HMDA Covered Financial Institution for 2023

**YES** • On preceding Dec. 31 did your assets exceed the threshold?

**YES** • On preceding Dec. 31 did you have a branch or home office in MSA?

**YES** • In preceding calendar year, did you originate at least one Home Purchase Loan (or refi) secured by first lien on a 1-4 family dwelling?

**YES** • Are you a federally-regulated lender?

**YES** • **Did you originate at least:**  
 • ~~100~~ **25 Closed-end Mortgage Loans in both of the two preceding calendar years (2021 & 2022)?** **OR**  
 • **200 dwelling-secured Open-end LOCs in both of the two preceding calendar years?**

**Then** • COLLECT & REPORT DATA  
 • If you answered NO to any of these questions, you are exempt from reporting.


**ACTION PLAN**

## HMDA Closed-end Threshold Court Ruling

- Review your 2021 and 2022 closed-end origination numbers
  - Count only originations that would have been reportable
  - First & subordinate liens, must be dwelling-secured
  - For any consumer purpose loans – subject to exemptions
  - For business purpose loans - only if home purchase, refinance or home improvement – subject to exemptions
- If you exceeded 25 in both years, dust off your HMDA program
  - Review processes & procedures
  - Contact vendors, if applicable, re: timeline & cost to resume reporting
  - Prepare to retrain staff
  - Outline parameters of monitoring program

October 28, 2022

Compliance Brief

5



## New IDOB Guidance

- [Considerations for Remote Loan Officers](#)
- Issued Oct. 19, 2022
- Definition Remote LO - works for Iowa bank but is based in a market where bank has no physical branch or LPO
- Considerations
  - Impact on bank's overall strategic plan as well as compliance matters
  - Review Supt. Guidance for LPOs ([SG-2015-01](#)) - same restrictions apply to remote LOs
    - Loan apps may be solicited and processed by remote LOs
    - However, core banking functions (e.g., approving & closing loans, accepting payments, etc.) may be performed **ONLY** at bank
    - Ensure clear separation of duties

October 28, 2022

Compliance Brief

6



## New IDOB Guidance

- [Considerations for Remote Executive Officers](#)
  - Benefits: expands pool of potential qualified candidates
  - Challenges: Additional risk management considerations and obstacles
  - Oversight impacts:
    - Regulators will more closely assess and discuss adequacy of risk management efforts
    - "...IDOB reserves right to assess remote executive officer arrangements more closely, and to assess them differently, in conjunction with de novo applications and applications for change of control to new ownership."

October 28, 2022

Compliance Brief

7



## New IDOB Guidance

- [FinTech Considerations](#)
- Provides items for Board and management consideration when contemplating relationships w/ FinTech providers
  - Ensure alignment w/ the strategic and business objectives
  - Maintain adequate systems to identify, measure, monitor, and control all risks associated w/ FinTech
  - Dedicate sufficient management oversight
  - Consider impact on bank capital, liquidity, earnings & market risk
  - Integrate FinTech activity in BSA/AML framework
- Referred to FFIEC guide - [Conducting Due Diligence on FinTech Companies – A Guide for Community Banks](#)
- State banks may need IDOB approval **prior to** starting new or innovative electronic activities – Contact IDOB Analyst

October 28, 2022

Compliance Brief

8



## CFPB Circular on Unanticipated Overdraft Fee Practices

- [Consumer Financial Protection Circular 2022-06](#) – Issued October 26
- Claims assessment of overdraft fees can constitute an “unfair” practice under UDAAP even when depository complies w/ TILA, TISA and EFTA
- Focus on “Authorize Positive/Settle Negative” transactions
  - Charging overdraft fees on debit card transactions that are authorized against positive available balance but at time transaction posts, intervening transactions have posted, resulting in negative ledger balance
  - Subject of recent Regions Bank enforcement action

October 28, 2022

Compliance Brief

9



## CFPB Bulletin on Unfair Returned Deposited Item Fee Assessment Practices

- [Compliance Bulletin 2022-06](#) – Issued October 26
- Asserts blanket policies of charging Returned Deposited Item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely “unfair” even when disclosed properly on TISA fee schedule
  - Check depositor has no control over whether, and likely no reason to anticipate, the deposited item will be returned
  - So they cannot “reasonably avoid the fee”
  - Fee may be reasonable if consumer knowingly deposits a counterfeit check or check that has been returned unpaid earlier

October 28, 2022

Compliance Brief

10



With a little **Woo Hoo**  
 Compliance is easier to do!

## 2022 IBA Compliance Conference

November 15-16, 2022

The Meadows Events Center at Prairie Meadows, Altoona

Sessions on:

- Understanding Overdraft & NSF Fee Hot Spots
- Preparing for 1071 Rule
- Crypto 101
- DE&I and Banking
- AND MORE!

Register at

<https://www.iowabankers.com/event/2022-compliance-conference/>

Oct. 28, 2022

Compliance Brief

11



## Budget NOW for 2023 Compliance Training

- IBA Onsite Compliance Training Services
  - Held at your bank
  - Lending, Deposit & BSA
  - From regulatory basics to exam hot topics & new regulatory requirements
  - Customized for your bank
  - Incorporate your bank procedures
  - IBA staff have prior banking experience and can provide practical insight on complex compliance issues
  - Training includes best practices & actionable guidance



**Budget now, Book now for 2023!**

Oct. 28, 2022

Compliance Brief

12



## Got Compliance Questions?

- On IBA website:
  - [Compliance Tools & Resources](#)
  - [Publications](#)
    - Disclosure, Iowa Banking Guide, Check Handling Guide, Record Retention Manual & more
  - [Training](#)
    - Compliance Briefs, On-demand training & more
- Compliance Hotline
  - [compliance@iowabankers.com](mailto:compliance@iowabankers.com)
  - 844-REGS411 (or 844-734-7411)

