

Financial Institution Compliance Update

May 5, 2015

This communication is designed to provide you with quick snapshots and timely perspective on recent regulatory developments.

Unfair Deceptive or Abusive Acts or Practices (UDAAP) - Guidance to help you comply

Background

UDAAP continues to be an area of focus for regulators. Because the UDAAP provisions of the Dodd-Frank Act are so vague and provide loose definitions for key terms such as “unfair,” “deceptive,” and “abusive”, regulators are able to link alleged UDAAP violations to other consumer financial services laws. The following sections provide additional information on operational areas cited in recent UDAAP violations, penalties assessed and recommendations to protect your organization.

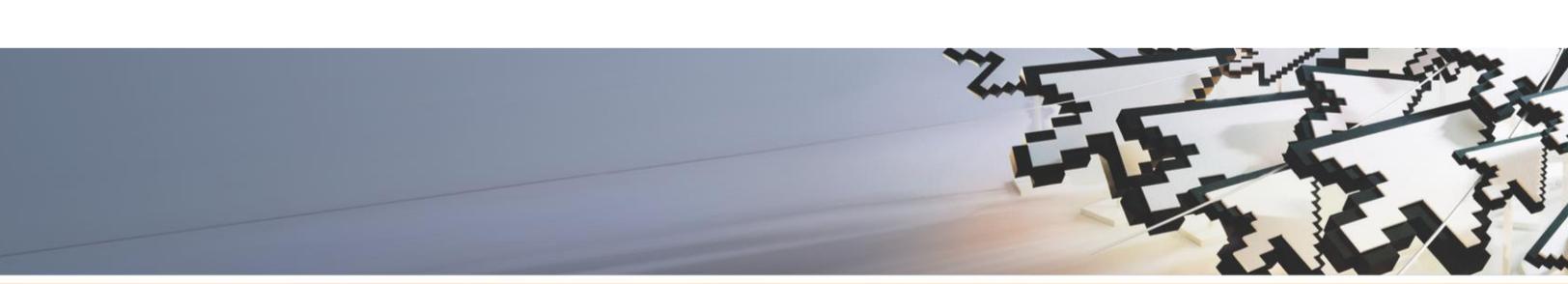
Relevancy

To avoid potential UDAAP violations, it is important to note that compliance with other existing regulations doesn't afford any protection or defense from a UDAAP claim. Business practices can be challenged if they are deemed “suspicious” without any violation of other laws or regulations. In addition to the obvious reputational damage, there can be significant financial consequences for organizations cited for UDAAP violations. In 2014 alone, federal regulators resolved UDAP/UDAAP cases resulting in over \$2.5 billion in civil money penalties and consumer redress.

Our recommendations

UDAAP violations can occur in many different operational areas. In 2014, the CFPB challenged practices in a wide variety of activities including:

- Automobile Financing (collection and servicing; advertisements via print, web and video)
- Banking Products and Practices (including “free” accounts, cash advance features and EFT error resolution processes)
- Credit Card Add-On Products (such as identity protection, payment protection, credit monitoring)
- Credit Card Advertising (membership fees, promotional APR solicitations)
- Credit Reporting and Monitoring (providing notices, ensuring accuracy of reports)
- Debt Collection (misrepresentation, threat of arrest for non-payment, filing of lawsuits, withdrawing of funds without consent, contacting third parties)
- General Consumer Credit (deceptive terms to Service members, merchants operating without proper licenses, charging rates above state limits)
- Mortgage Advertising (advertising unavailable rates, false claims of “no money down” and “no closing cost” loans, misrepresented monthly payments, nondisclosure of material terms and conditions, ability to reduce mortgage payments)
- Mortgage Servicing (timely and accurate application of payments, inaccurate account statements, unauthorized fees, wrongly force placed insurance, misleading responses to borrower complaints, assessments of prepayment penalties)

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- Payday Loans (misrepresentation of ability to garnish wages; disclosure of debt without borrower's knowledge or consent; threatening borrower with criminal prosecution, arrest, loss of driver's license, or loss of custody of their children; excessive phone calls)
 - Student Loans (student debt-relief services, disbursement of financial aid refunds, inadequate payment allocation methods, inadequate billing statement disclosures)

During recent UDAAP compliance audits for some of our community banking clients, we made the following recommendations to help strengthen their existing processes, policies and procedures:

- Review policies and procedures to ensure the necessary and appropriate cross-references are included.
- Review risk assessments to ensure they include UDAAP risks and controls.
- Review complaint-handling system for UDAAP patterns and trends. Ensure these patterns and trends are properly reported and discussed with executive management.
- Review training programs and materials to ensure they include adequate content on the provision of law that prohibit UDAAP.
- Review all advertisements for potential UDAAP concerns.
- Ensure the bank's third-party agreements and internal policies include effective risk and monitoring controls for selecting and managing third-party contractors.
- Review customer statements to ensure fee disclosure, especially that consecutive fees (such as continuous overdraft charges) are accurately reported in both current period and year-to-date totals.
- Compare product descriptions with related internal policies and procedures to ensure the products are being used correctly for overdraft protection and that all employees are offering and/or processing the services correctly.
- Review online product descriptions with printed materials distributed to customers to ensure all content includes an "as of" date and that all content is both current and consistent.

How Experis can help

Experis Finance offers industry experience in all aspects of financial services institution compliance including: policy and procedure development and review, business process review and transformation, governance, comprehensive risk assessments, internal control testing and monitoring techniques.

To learn more about our industry best practices or how Experis can assist you, contact us at knowledge@experis.com or visit [Experis Finance](https://www.experis.com).