



7 Steps to Reduce UDAAP Risks

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Overview

- What is UDAAP?
- UDAP versus UDAAP
- 7 Steps to Reduce UDAAP Risk
- Conducting UDAAP Analysis
- Where is there UDAAP risk?
 - Regulatory Focus & Fines

What is UDAAP?

- UDAAP stands for “unfair, deceptive or abusive acts or practices”
- CFPB has rule writing authority
 - Unlikely to define “abusive”
 - *Supervision by enforcement*

UDAP versus UDAAAP

- Dodd-Frank added “abusive”
 - Bank and CU regulators retain enforcement authority for depository institutions \leq \$10 billion
 - CFPB has enforcement authority for depository institutions (including CUs) with assets $>$ \$10 billion and nonbanks

UDAP versus UDAAAP

- Federal Trade Commission, federal banking regulators and state attorneys general have historically had UDAP powers
 - Rescinded Regulation AA
 - Still retain their UDAP powers
 - CFPB focus is leading the way

Objectives of the CFPB

Dodd-Frank included **statutory objectives**:

- Ensure consumers have timely and understandable information;
- **Protect from unfair, deceptive or abusive acts;**
- Reduce unnecessary regulatory burdens;
- Promote fair competition through consistent enforcement of laws and regulations; and
- Encourage markets that operate transparently and efficiently to facilitate access & innovation

Step 1 – Understand UD AAP

- Understand your products
- Understand your marketing
- Understand your risk tolerance
- Understand your credit union's "culture of compliance"
- Understand UD AAP and your risks

Step 2 – Draft a UD AAP Policy

- Another policy? Yes.
- Is this required by regulation? No.
 - “Best Practice”
- Simply outlines the CU’s commitment to provide products/services that are understandable and fair
- Details will be in other procedures

Step 3 – Review Marketing Content

- Does CU have a formal review process?
 - Be sure to document the process and cross-reference in UDAAP policy
- Beyond the advertising disclosures
 - Overall message to members
 - Clear and conspicuous?
- Monitor member usage

Step 4 – Review the Fine Print

- Do your contract and disclosures match your marketing?
 - Are conditions added after the fact?
- Are there introductory or teaser terms?
 - Are they clearly disclosed?
- **Do your practices follow what was promised in the marketing and what is outlined in your contract and disclosures?**

Step 5 – Monitor Your Vendors

- How do your third-party service providers interact with your members?
 - Are they upfront and clear?
- UDAAP risk cannot be contracted away
 - Your credit union's reputation
 - Third-party is not on front of newspaper
- Risk assessment should include vendors
- Are there complaints about the vendor?

Step 6 – Manage Complaints

- Complaints are the number one way regulators learn of potential UDAAP issues
 - Formal or informal complaints
- Do more than correct the issue
 - Track complaints & view for trends
 - Were the complaints about a 3rd party?
- Reduce UDAAP risk by taking proactive steps to adjust procedures

Step 7 – Train Staff

- UDAAP is subjective
- Highlights the need for staff to be trained and attentive to *potential* UDAAP issues
- If an employee sees an issue, are they empowered to bring it up to compliance?
- A cross-section of staff are needed to ensure the CU's practices match their marketing and contract/disclosures

UDAAP Analysis

- *How do you know in advance?*
- **Emphasis on risk management**
 - UDAAP analysis prior to:
 - Product development;
 - Advertising campaign;
 - Changing terms on existing products;
 - Selecting vendors; and
 - More.....*Put on your UDAAP hat!*

UDAAP

- *UDAAP applies to all products and services*
- **Questions to consider:**
 - How is the service marketed?
 - Are the terms clearly disclosed?
 - How are members using the service?
 - Which members are using the service?
 - Have we received any complaints?
 - Have we made the necessary changes?

UDAAP

- *Importantly, an act or practice does not need to be a regulatory violation in order to be unfair, deceptive or abusive*
- **Beyond the regulatory requirements**
 - Overall risk management
 - UDAAP analysis
 - Member complaints
 - Where are your complaints?
 - Are members confused by the product?

Potential Areas of Concern

- Marketing of products and services
 - “Free” checking (\$2.9 million refund)
 - “No closing costs”
- Contractual terms
 - Payment allocation – especially student loans
 - Reward programs
- Third-party products
 - Credit monitoring; credit reports; credit scores; credit insurance; ID Theft products

Potential Areas of Concern

- Overdraft protection
 - Marketing of opt-in for ATM/Debit transactions
 - Inability of members to opt-out
 - Lack of disclosure of other available options
- Electronic Disclosures
 - Improper E-SIGN Act consent process
 - Consent must be given electronically or confirmed electronically
- Loan Servicing – modifications, SCRA, payoffs

CFPB Guidance – Bulletin 2014-02

- Marketing of Credit Card Promotional APR Offers
 - Advertisements “risk being deceptive if the marketing materials do not clearly and prominently convey that a consumer who accepts such an offer and continues to use the credit card to make purchases will lose the grace period on the new purchases if the consumer does not pay the entire statement balance, including the amount subject to the promotional APR, by the payment due date.”

CFPB Guidance – Bulletin 2014-02

- Marketing of Credit Card Promotional APR Offers
 - “Regulation Z does not require marketing materials to include additional disclosures alerting consumer to the effect of accepting a promotional offer on the loss of the grace period on purchases. However, as discussed above, the CFPB is concerned that the marketing materials accompanying some offers may risk being deceptive or abusive in violation of the Dodd-Frank Act, even if Regulation Z is not violated.”

Key Takeaways

- **UDAAP continues to be a HOT topic**
- *Supervision by enforcement*
- Manage your vendors
- UDAAP analysis needs to occur upfront
 - Any product, service or practice could be subject to a UDAAP violation
 - Review marketing, disclosures & procedures
- Review/address member complaints

Questions?

Thank You!

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Unfair

- Section 5 of Federal Trade Commission Act
- Act or practice is unfair if:
 - It causes or is likely to cause substantial injury to consumers;
 - The injury is not reasonably avoidable by consumers; and
 - The injury is not outweighed by countervailing benefits to consumers or to competition.

Deceptive

- 1983 FTC Policy Statement
- Act or practice is deceptive if:
 - The representation, omission, act or practice misleads or is likely to mislead the consumer;
 - The consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and
 - The misleading representation, omission, act or practice is material.

Abusive

- Dodd-Frank definition
- Act or practice is abusive if:
 - Materially interferes with the ability of a consumer to understand a term or condition of a financial product or service; or

How do you know in advance?

Abusive

- Takes unreasonable advantage of –
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interest of the consumer.