


Unfair, Deceptive or Abusive Acts and Practices / UDAAP

Presented By:
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Purpose

- Unfair or Deceptive Acts or Practices / UDAP: Dodd-Frank Act added second *A* for abusive – now have Unfair, Deceptive or *Abusive* Acts or Practices / UDAAP
- Under Dodd-Frank Act: Unlawful for any provider of consumer financial products or services or service provider to engage in any unfair, deceptive or abusive act or practice.



Purpose

- Products or services will be reviewed:
 - Deposit Products
 - Lending Activities, along with
 - Identifying Risks of Harm to Consumers
- Products will be reviewed that combine features and terms that –
 - Can increase difficulty of consumer understanding of overall costs or risks of product and potential harm to consumer associated with product.



Purpose

- Consumer Complaints:
 - Act establishes procedures for receiving and handling consumer complaints regarding bank.
 - Regulatory agencies' intent to encourage consumers to submit complaints regarding unfair, deceptive or abusive acts or practices by bank, or any violation of law or regulation.

UDAAP Complaint Worksheet

Bank: *[Insert your bank name here, then delete this remark.]*

Complaint Number

Note: *Intelligence gathered from consumer contacts are to be organized, retained and used as part of the bank's compliance management system.*

Complaint Received Date:	
Consumer Complaint Name:	
Complaint / Inquiry Against Bank From:	
	<input type="checkbox"/> Regulator
	<input type="checkbox"/> State Regulator
	<input type="checkbox"/> State Attorneys General Office(s) or Licensing and Registration Agencies
	<input type="checkbox"/> Private or Other Industry Sources
	<input type="checkbox"/> Other:
Consumer Complaint Identification Alleging:	
	<input type="checkbox"/> Deception
	<input type="checkbox"/> Unfair Treatment
	<input type="checkbox"/> Unlawful Discrimination or Other Significant Consumer Injury
	Comments / Remarks:
How complaints for:	
	<input type="checkbox"/> Handling
	<input type="checkbox"/> Timeliness
	<input type="checkbox"/> Disposition
	<input type="checkbox"/> Prospective and Retrospective Corrective Actions
	Comments / Remarks:
of Law or Regulation: Determine –	
on Action Offered, or Taken, as applicable	
statements, or missing disclosure information, needing review.	

Compliance Review Procedures

Unfair Deceptive or Abusive Acts or Practices

Procedure 1

To initially identify potential areas of unfair, deceptive or abusive acts or practices / UDAAP concerns, obtain and review copies of the following to the extent relevant to the review:

- Training materials.

Findings:

Procedure 2

Obtain and review copies of the following to the extent relevant to the review:

- Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements and periodic and account statement.

Findings:

Procedure 3

Obtain and review copies of the following to the extent relevant to the review:

- Procedure manuals and written policies, including those for servicing and collections.

Findings:

Procedure 4

Obtain and review copies of the following to the extent relevant to the review:

- Minutes of meetings of the board of directors and of management committees / council(s), including those related to compliance.

Findings:

Procedure 5

Obtain and review copies of the following to the extent relevant to the review:

- Internal control monitoring and auditing materials.

Findings:

Procedure 6

Obtain and review copies of the following to the extent relevant to the review:

- Compensation arrangements, including incentive programs for employees and third-parties.

Findings:

Procedure 7

Obtain and review copies of the following to the extent relevant to the review:

- Documentation related to new product development, including relevant meeting minutes of the board of directors, and of compliance and new product committees / council(s).

Findings:

Procedure 8

Obtain and review copies of the following to the extent relevant to the review:

- Marketing programs, advertisements and other promotional material in all forms of media – including print, radio, television, telephone, Internet or social media advertising.

Findings:

1st National Bank
1234 Main Street
Anycity, Anystate 12345

Review Date / Period:
1/1/2013

Review Performed By:
Name of Reviewer

UDAAP Compliance Review

MANAGEMENT AND POLICY - RELATED REVIEW PROCEDURES			
General Comments	Answer	"Correct", "Best Practice", or Regulatory Explanation if Necessary	
Identify potential UDAAP concerns by reviewing all relevant written policies and procedures, customer complaints received by the bank or by regulatory agencies, internal and external audit reports, statistical and management reports, and examination reports. Determine whether: The scope of the bank's compliance review includes reviewing potential unfair, deceptive or abusive acts or practices?			
The compliance review work is performed consistent with the complaint plan and scope?			
The frequency and depth of review is appropriate to the nature of the activities and size of the bank?			
Management and the board of directors are made aware of and review significant deficiencies and their causes?			
Management has taken corrective actions to follow up on any identified deficiencies?			
The bank's compliance programs ensure that policies are being followed through its sampling of relevant product types and decision centers, including sales, processing and underwriting?			
The bank has a process to respond to consumer complaints in a timely manner and determine whether consumer complaints raise potential UDAAP concerns?			
The bank has not been subject to any enforcement actions or has not been investigated by a regulatory or law enforcement agency for violation of consumer protection laws or regulations that may indicate potential UDAAP concerns?			
Through discussions with management and a review of available information, determine whether the bank's internal controls are adequate to prevent unfair, deceptive or abusive acts or practices. Consider whether: The compliance management program includes measures aimed at avoiding unfair, deceptive or abusive practices, including: Organizational charts and Process flowcharts?			

1st National Bank
1234 Main Street
Anycity, Anystate 12345

Review Date / Period:
1/1/2013

Review Performed By:
Name of Reviewer

UDAAP Compliance Review

Through discussions with management and a review of available information, determine whether the bank's internal controls are adequate to prevent unfair, deceptive or abusive acts or practices. Consider policies and procedures?			
Through discussions with management and a review of available information, determine whether the bank's internal controls are adequate to prevent unfair, deceptive or abusive acts or practices. Consider monitoring and audit procedures?			
The bank conducts prior UDAAP reviews of advertising and promotional materials, including promotion materials and marketing scripts for new products?			
The bank evaluates initial and subsequent disclosures, including customer agreements and changes in terms, for potential UDAAP concerns?			
The bank reviews new products and changes in the terms and conditions of existing products for potential UDAAP concerns?			
The bank has a thorough process for receiving and responding to consumer complaints and has a process to receive complaints made to third-parties, such as the Better Business Bureau or the CFPB, etc?			
The bank evaluates servicing and collections for UDAAP concerns?			
The bank has established policies and controls relating to employee and third-party conduct, including: Initial and ongoing training?			
The bank has established policies and controls relating to employee and third-party conduct, including: Performance reviews?			
The bank has established policies and controls relating to employee and third-party conduct, including: Discipline policies and records of disciplinary actions?			
The bank has established policies and controls relating to employee and third-party conduct, including: Third-party agreements and contractual performance standards?			

Consumer Complaint Form

Internal Use
Complaint Number

Bank: *[Insert your bank name here, then delete this remark.]*

[illegible]

Use this policy to guide your
compliance with
**UNFAIR, DECEPTIVE OR
ABUSIVE ACTS AND
PRACTICES / UDAAP**
FED – 12 CFR 227
FDIC 15 USC 57 / Regulation AA
Title X – Section 1031
Dodd – Frank Act

UNFAIR, DECEPTIVE OR ABUSIVE ACTS AND PRACTICES POLICY

BANK NAME [1]

[1: Your bank's name should appear on every policy to indicate clearly that it is your bank's statement of policy, not a generic policy that purports to fit every bank.]

PURPOSE

Unfair, Deceptive or Abusive Acts or Practices / UDAAP can cause significant financial injury to consumers, erode consumer confidence and undermine the financial marketplace. Under the Dodd – Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice. The Act provides the Consumer Financial Protection Bureau / CFPB / the Bureau with rule making authority to prevent unfair, deceptive or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

Products or services will be reviewed, such as deposit products or lending activities, along with identifying the risks of harm to consumers that are particular to those activities. Products will be reviewed that combine features and terms in a manner that can increase the difficulty of consumer understanding of the overall costs or risks of the product and potential harm to the consumer associated with the product.

The review procedures provide guidance on:

- The principles of unfairness, deception and abuse in the context of offering and providing consumer financial products and services;
- Assessing the risk that the bank's practices may be unfair, deceptive or abusive;
- Identifying unfair, deceptive or abusive acts or practices - by providing examples of potentially unfair or deceptive acts and practices; and
- Understanding the interplay between unfair, deceptive or abusive acts or practices and other consumer protection statutes.

The Act also establishes procedures for receiving and handling consumer complaints regarding banks and to set forth the regulatory agencies' intent to encourage consumers to submit complaints regarding unfair, deceptive or abusive acts or practices by a bank, or a violation of a law or regulation. Additionally, the Act is to discourage unfair, deceptive or abusive acts or practices by prohibiting banks from using (1) certain provisions in their consumer credit contracts, (2) a late charge accounting practice known as pyramiding and (3) deceptive cosigner practices.

POLICY STATEMENT

The bank will comply with the Unfair, Deceptive or Abusive Acts and Practices by refraining from unfair, deceptive or abusive acts and practices and by establishing an internal complaint procedure.

UNFAIR ACTS OR PRACTICES

The standard for unfairness in the Dodd - Frank Act is that an act or practice is unfair when:

- The act or practice must cause or be likely to cause substantial injury to consumers;
 - Substantial injury usually involves monetary harm. Monetary harm includes, for example, costs or fees paid by consumers as a result of an unfair practice. An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury.
 - Actual injury is not required in every case. A significant risk of concrete harm is also sufficient. However, trivial or merely speculative harms are typically insufficient for a finding of substantial injury. Emotional impact and other more subjective types of harm also will not ordinarily amount to substantial injury. Nevertheless, in certain circumstances, such as unreasonable debt collection harassment, emotional impacts may amount to or contribute to substantial injury.
- Consumers must not be reasonably able to avoid the injury;
 - An act or practice is not considered unfair if consumers may reasonably avoid injury. Consumers cannot reasonably avoid injury if the act or practice interferes with their ability to effectively make decisions or to take action to avoid injury. Normally the marketplace is self - correcting; it is governed by consumer choice and the ability of

individual consumers to make their own private decisions without regulatory intervention. If material information about a product, such as pricing, is modified after, or withheld until after, the consumer has committed to purchasing the product; the consumer cannot reasonably avoid the injury. Moreover, consumers cannot avoid injury if they are coerced into purchasing unwanted products or services or if a transaction occurs without their knowledge or consent.

- A key question is not whether a consumer could have made a better choice. Rather, the question is whether an act or practice hinders a consumer's decision - making. For example, not having access to important information could prevent consumers from comparing available alternatives, choosing those that are most desirable to them, and avoiding those that are inadequate or unsatisfactory. In addition, if almost all market participants engage in a practice, a consumer's incentive to search elsewhere for better terms is reduced and the practice may not be reasonably avoidable.
- The actions that a consumer is expected to take to avoid injury must be reasonable. While a consumer might avoid harm by hiring independent experts to test products in advance or by bringing legal claims for damages in every case of harm, these actions generally would be too expensive to be practical for individual consumers and, therefore, are not reasonable.
- The injury must not be outweighed by countervailing benefits to consumers or competition.
 - To be unfair, the act or practice must be injurious in its net effects — that is, any offsetting consumer or competitive benefits that also are produced by the act or practice must not outweigh the injury. Offsetting consumer or competitive benefits of an act or practice may include lower prices to the consumer or a wider availability of products and services resulting from competition.
 - Costs that would be incurred for measures to prevent the injury also are taken into account in determining whether an act or practice is unfair. These costs may include the costs to the bank in taking preventive measures and the costs to society as a whole of any increased burden and similar matters.
 - Public policy, as established by statute, regulation, judicial decision or agency determination, may be considered with all other evidence to determine whether an act or practice is unfair. However, public policy considerations by themselves may not serve as the primary basis for determining that an act or practice is unfair.

[Examples: The examples described below stem from federal enforcement actions. They provide insight into practices that have been alleged to be unfair by the regulators. However, the particular facts in a case are crucial to a determination of unfairness. It is important to bear in mind that a change in facts could change the appropriate determination. Moreover, the brief summaries below do not present all of the material facts relevant to the determinations in each case. The examples show how

the unfairness standard may be applied. If you do not want to include these examples in your policy, please delete the following italicized text.]

Refusing to release a lien after the consumer makes the final payment on a mortgage. *The Federal Trade Commission / FTC brought an enforcement action against a mortgage company based on allegations, described below, that the mortgage company repeatedly failed to release liens after consumers fully paid the amount due on their mortgages.*

- *Substantial Injury: Consumer's sustained economic injury when the mortgage servicer did not release the liens on their properties after the consumers had repaid the total amount due on the mortgages.*
- *Not Outweighed by Benefits: Countervailing benefits to competition or consumers did not result from the servicer's alleged failure to appropriately service the mortgage loan and release the lien promptly.*
- *Not Reasonably Avoidable: Consumers had no way to know in advance of obtaining the loan that the mortgage servicer would not release the lien after full payment. Moreover, consumers generally cannot avoid the harm caused by an improper practice of a mortgage servicer because the owner of the loan, not the borrower, chooses the servicer. Thus, consumers cannot choose their loan servicer and cannot change loan servicers when they are dissatisfied with the quality of the loan servicing.*

Dishonoring credit card convenience checks without notice. *The Office of Thrift Supervision / OTS and Federal Deposit Insurance Corporation / FDIC brought enforcement actions against a credit card issuer that sent convenience checks with stated credit limits and expiration dates to customers. For a significant percentage of consumers, the issuer reduced credit lines after the checks were presented, and then the issuer dishonored the consumers' checks.*

- *Substantial Injury: Customers paid returned - check fees and may have experienced a negative impact on credit history.*
- *Not Outweighed by Benefits: The card issuer later reduced credit limits based on credit reviews. Based on the particular facts involved in the case, the harm to consumers from the dishonored convenience checks outweighed any benefit of using new credit reviews.*
- *Not Reasonably Avoidable: Consumers reasonably relied on their existing credit limits and expiration dates on the checks when deciding to use them for a payment. Consumers had received no notice that the checks they used were being dishonored until they learned from the payees. Thus, consumers could not reasonably have avoided the injury.*

Processing payments for companies engaged in fraudulent activities.
The Office of Currency Control / OCC brought an enforcement action in a case involving a bank that maintained deposit account relations with telemarketers and payment processors. The telemarketers regularly deposited large numbers of remotely created checks drawn against consumers' accounts. The consumers did not authorize a large percentage of the checks. The bank failed to establish appropriate policies and procedures to prevent, detect or remedy such activities.

- *Substantial Injury: Consumers lost money from fraudulent checks created remotely and drawn against their accounts.*
- *Not Outweighed by Benefits: The cost to the bank of establishing a minimum level of due diligence, monitoring and response procedures sufficient to remedy the problem would have been far less than the amount of injury to consumers that resulted from the bank's avoiding those costs.*
- *Not Reasonably Avoidable: Consumers could not avoid the harm because the harm resulted principally from transactions to which the consumers had not consented.*

DECEPTIVE ACTS OR PRACTICES

A representation, omission, act or practice is deceptive when:

- There must be a representation, omission, act or practice that misleads or is likely to mislead the consumer;
 - Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be deceptive if it is *likely to mislead* consumers.
 - It is necessary to evaluate an individual statement, representation or omission not in isolation, but rather in the context of the entire advertisement, transaction or course of dealing, to determine whether the overall net impression is misleading or deceptive. A representation may be an express or implied claim or promise, and it may be written or oral. If material information is necessary to prevent a consumer from being misled, it may be deceptive to omit that information.
 - Written disclosures may be insufficient to correct a misleading statement or representation, particularly where the consumer is directed away from qualifying limitations in the text or is counseled that reading the disclosures is unnecessary. Likewise, oral or fine print disclosures or contract disclosures may be insufficient to cure a misleading headline or a prominent written representation. Similarly, a deceptive act or practice may not be cured by subsequent accurate disclosures.
 - Acts or practices that may be deceptive include:

- Making misleading cost or price claims;
- Offering to provide a product or service that is not in fact available;
- Using bait – and - switch techniques;
- Omitting material limitations or conditions from an offer; or
- Failing to provide the promised services.
- The FTC's Four Ps Test can assist in the evaluation of whether a representation, omission, act or practice is likely to mislead:
 - PROMINENCE: Is the statement prominent enough for the consumer to notice?
 - PRESENTATION: Is the information presented in an easy – to - understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere?
 - PLACEMENT: Is the placement of the information in a location where consumers can be expected to look or hear?
 - PROXIMITY: Finally, is the information in close proximity to the claim it qualifies?
- The representation, omission, act or practice must be considered from the perspective of the reasonable consumer;
 - In determining whether an act or practice is misleading, one also must consider whether the consumer's interpretation of or reaction to the representation, omission, act or practice is reasonable under the circumstances. In other words, whether an act or practice is deceptive depends on how a reasonable member of the target audience would interpret the representation. When representations or marketing practices target a specific audience, such as older Americans, young people or financially distressed consumers, the communication must be reviewed from the point of view of a reasonable member of that group.
 - Moreover, a representation may be deceptive if the majority of consumers in the target class do not share the consumer's interpretation, so long as a significant minority of such consumers is misled. When a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.
 - Exaggerated claims or puffery, are not deceptive if a reasonable consumer would not take the claims seriously.
- The representation, omission or practice must be material.

- A representation, omission, act or practice is material if it is likely to affect a consumer's choice of, or conduct regarding, the product or service. Information that is important to consumers is material.

THIS IS A STRIPPED VERSION OF THE POLICY. ADDITIONAL TOPICS COVERED INCLUDE:

ABUSIVE ACTS OR PRACTICES

RELATIONSHIP TO OTHER LAWS

Truth in Lending and Truth in Savings Acts

Equal Credit Opportunity and Fair Housing Acts

Fair Debt Collection Practices Act

THE ROLE OF CONSUMER COMPLAINTS IN IDENTIFYING UNFAIR, DECEPTIVE OR ABUSIVE ACTS OR PRACTICES

ANALYZING COMPLAINTS

CUSTOMER COMPLAINTS

SUBSTANTIVE COMPLAINTS

DEPARTMENTAL RESPONSIBILITIES

COMPLIANCE COUNCIL RESPONSIBILITIES

MANAGING RISKS RELATED TO UNFAIR, DECEPTIVE OR ABUSIVE ACTS OR PRACTICES

UNFAIR CONTRACT PROVISIONS

UNFAIR COSIGNER PRACTICES

UNFAIR LATE CHARGES

TRAINING

REVIEW OF POLICY

POLICY TEMPLATE ALSO INCLUDES:

REVIEW PROCEDURES

- **REVIEW OBJECTIVES**
DOCUMENT REVIEW
MANAGEMENT AND POLICY – RELATED REVIEW PROCEDURES
POTENTIAL AREAS FOR TRANSACTION TESTING
TRANSACTION –RELATED REVIEW PROCEDURES

UDAAP COMPLAINT MANAGEMENT SYSTEM

CONSUMER COMPLAINT PROCEDURES

UDAAP COMPLAINT MANAGEMENT WORKSHEET