Unfair, Deceptive, or Abusive Acts or Practices

Introduction

Unfair, deceptive, or abusive acts and practices (UDAAPs) 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 also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement 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. In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.

As examiners review products or services, such as deposit products or lending activities, they generally should identify the risks of harm to consumers that are particular to those activities. Examiners also should review products 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 the potential harm to the consumer associated with the product.

These examination procedures provide general 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 an institution’s practices may be unfair, deceptive, or abusive;
- Identifying unfair, deceptive or abusive acts or practices (including 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.

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1 Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010).

2 Sec. 1031 of the Act. The principles of “unfair” and “deceptive” practices in the Act are similar to those under Sec. 5 of the Federal Trade Commission Act (FTC Act). The Federal Trade Commission (FTC) and federal banking regulators have applied these standards through case law, official policy statements, guidance, examination procedures, and enforcement actions that may inform CFPB.

3 Sec. 1024; Sec. 1025(b)(1); Sec. 1026(b) of the Act.
EXAMINATION OBJECTIVES

- To assess the quality of the regulated entity’s compliance risk management systems, including internal controls and policies and procedures, for avoiding unfair, deceptive, or abusive acts or practices (UDAAP).
- To identify acts or practices that materially increase the risk of consumers being treated in an unfair, deceptive, or abusive manner.
- To gather facts that help determine whether a regulated entity engages in acts or practices when offering or providing consumer financial products or services that are likely to be unfair, deceptive, or abusive.
- To determine, in consultation with Headquarters, whether an unfair, deceptive or abusive act or practice has occurred and whether further supervisory or enforcement actions are appropriate.

GENERAL GUIDANCE

Based on the results of the risk assessment of the entity, examiners should review for potential unfair, deceptive, or abusive acts or practices, taking into account an entity’s marketing programs, product and service mix, customer base, and other factors, as appropriate. Even if the risk assessment has not identified potential unfair, deceptive, or abusive acts or practices, examiners should be alert throughout an examination for situations that warrant review.

1. Document Review

- To initially identify potential areas of UDAAP concerns, obtain and review copies of the following to the extent relevant to the examination:
  - Training materials.
  - Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements, and periodic and account statements.
  - Procedure manuals and written policies, including those for servicing and collections.
  - Minutes of the meetings of the Board of Directors and of management committees, including those related to compliance.
  - Internal control monitoring and auditing materials.
  - Compensation arrangements, including incentive programs for employees and third parties.
  - Documentation related to new product development, including relevant meeting minutes of Board of Directors, and of compliance and new product committees.