

An aerial photograph of a winding asphalt road through a dense green forest. A yellow car is driving on the road. The text is overlaid on the image.

WIPFLI

How to stay out of UDAAP jail

*California Bankers Association
2025 Risk and Compliance Conference*

October 2025

Overall purpose of UDAAP

Protect consumer from unfair deceptive or abusive acts which may or may not be directly addressed in other consumer compliance regulations

UDAAP background

Unfair methods came about back in 1938

Expanded in 2004 to include deceptive [UDAP]

- Section 5 of the FTC Act

Expanded as a part of Dodd-Frank in 2010 to include abusive [UDAAP]

What does UDAAP mean?

Unfair

- Section 5 of FTC Act and Dodd-Frank UDAAP
- Causes or is likely to cause substantial consumer harm AND
- Injury cannot reasonably be avoided AND
- Injury is not outweighed by benefits to consumer or competition

Deceptive

- Section 5 of FTC Act and Dodd-Frank UDAAP
- The representation, omission, or practice is likely to mislead consumers whose interpretation is reasonable in the circumstances presented AND
- The presentation, omission, or practice is material

Abusive

- Dodd-Frank UDAAP
- Materially interferes with the consumer's ability to understand a term or condition of a product or service OR
- The practice takes unreasonable advantage of a consumer's

What is “unfair”?

- Substantial harm usually involves monetary harm
 - May include unquantifiable or non-monetary harm
 - Small amount of harm to a large number of people
 - Significant amount of harm to a small number of people
- Cannot reasonably avoid injury from an act or practice if it interferes with their ability to effectively make decisions or take action to avoid injury
 - Material information about a product is modified or withheld until after purchase
 - Disclosures do not effectively explain an act or practice
 - Subject to undue influence or are coerced into purchasing unwanted products or services

What is “unfair”?

- Not substantial or considered unfair
 - Trivial or merely speculative harm
 - Emotional impact
 - More subjective types of harm
 - Consumers may reasonably avoid injury
 - Offsetting consumer benefit outweighs the injury

What is “deceptive”?

- Three prong approach
 - Does the representation, omission or practice mislead or be likely to mislead the consumer?
 - **Representation – written or oral, expressing or implying claims or promises**
 - **Conveys two or more meanings may be misleading**
 - Is the consumer’s interpretation of the representation, omission, or practice reasonable under the circumstances?
 - **Omitted information misleads the consumer**
 - Is the misleading representation, omission or practice material?
 - **Likely to effect a consumer’s decision to purchase or use a product or service**
 - **Claims made with knowledge that they are false**

What is “Abusive”?

- Unreasonable advantage of consumers
 - Lack of understanding of the risks, costs, or conditions of the products or service
OR
 - Inability to protect the consumer’s interest in selecting or using the product/service
OR
 - Reasonable reliance by the consumer on a covered person to act in the consumer’s interest

Areas of consideration for product/service UDAAP risk

- Agreements with third-parties
- New product development documentation
- Documentation of software testing and relevant software algorithms or parameters
- Organizational charts, procedural manuals and process workflows, including those for sales, operations, servicing and collections
- Compensation programs
- Customer disclosures, notices, agreements, and contracts
- Periodic statements
- Advertisement and marketing documentation, including promotional materials, telemarketing and sales scripts, recorded calls for telemarketing or collections
- Relevant training materials
- Collection scripts and notices
- Complaint log and files

Regulatory actions and concerns

Order issuance and complaint filing by the CFPB

- Walmart Inc., and Branch Messenger, Inc. – December 23, 2024
 - Required Spark Drivers to receive compensation in Branch Accounts, opening Branch Accounts for Spark Drivers without their informed consent or on an unauthorized basis, and making deceptive statements about Branch to Spark Drivers
- Early Warning Services, LLC; Bank of America, N.A.; JP Morgan Chase Bank, N.A.; Wells Fargo Bank, N.A. – December 20, 2024
 - Failing to take timely, appropriate, and effective measures to prevent, detect, limit, and address fraud on the Zelle Network
- Performant Recovery, Inc. – December 9, 2024
 - Unlawful collection activities involving student-loan borrowers who were attempting to bring their student loans out of default

Order issuance and complaints filed by the CFPB

- Comerica Bank – December 6, 2024
 - Contract with Depart of the Treasury, Bureau of the Fiscal Service to deliver various government benefits through a prepaid “Direct Express” debit card
 - Failing to provide consumers a reasonable way to obtain effective and timely assistance, impeding consumers’ access to their accounts and their ability to avail themselves of the protections of Regulation E/EFTA
 - Forcing consumers to close their accounts and request new cards, causing them to incur additional fees instead of meeting its obligation to honor stop payment requests
 - Failing to provide correct and complete information to enrollment-fraud victims regarding whether the fraud occurred and how to obtain remediation
 - Charging consumers ATM fees that they did not owe

Order issuance and complaint filing by the CFPB

- Goldman Sachs Bank USA – October 23, 2024
 - Had an agreement with Apple Inc. to offer Apple Card (credit card integrated with Apple software that offers both market-rate APRs and interest-free financing for qualifying Apple products)
 - **Delay in resolving transaction disputes**
 - Also offered Apple Card Monthly Installments (ACMI) – allowed Apple Card users to finance the purchase of certain Apple devices directly with Apple through the payment of interest-free monthly installments
 - **Mislead consumers to expect that purchases of Apple devices would automatically be enrolled in ACMI**
 - **Mislead consumers enrolled in ACMI about the application of refunds to Apple Card accounts with both ACMI and non-ACMI balances**

Order issuance and complaint filing by the CFPB

- Ejudicate, Inc., d/b/a Brief – October 10, 2024
 - Commencing arbitration proceedings with consumer's consent
- NOVAD Management Consulting, LLC – June 18, 2024
 - Loan servicing operation
 - Sent borrowers repayment or “due and payable” letters that often falsely conveyed that their loans were in default and that the full amount of their loan was due
 - Failed to effectively service borrowers' reverse mortgages
 - **Failing to acknowledge, timely respond to, and substantively respond to borrowers' time-sensitive information requests and error notices**
 - **Failing to acknowledge, investigate, and correct servicing errors**
 - **Failing to engage in two-way communications with borrowers, including after sending repayment letters to borrowers**

Questions?

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