

Compliance Focus: UDAAP

Answers from insideCompliance



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accounts receivable management



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Introduction – What is UDAAP?

UDAAP stands for Unfair, Deceptive and Abusive Acts or Practices taking place in the debt collection industry. The Dodd–Frank Wall Street Reform and Consumer Protection Act expanded on the concept of UDAP (Unfair or Deceptive Acts or Practices) from the Federal Trade Commission Act by adding “abusive” to the alphabet soup. It also gave the newly-formed Consumer Financial Protection Bureau a directive to supervise financial institutions and prevent UDAAP through rule-making, examination and enforcement.

The CFPB is tasked with regulating “service providers,” which are defined as “any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.” Non-bank entities like debt collectors could be service providers under this definition, which means they’re covered by the CFPB’s authority.

An act or practice is *unfair* when:

1. It causes or is likely to cause substantial injury to consumers. Typically, a substantial injury is monetary harm.
2. The injury is not reasonably avoidable by consumers.
3. The injury is not outweighed by countervailing benefits to consumers or to competition.

An act or practice is *deceptive* when:

1. It misleads or is likely to mislead the consumer.
2. The consumer has a reasonable interpretation of the behavior.
3. The behavior (the misleading representation, omission, act, practice, etc.) is material.

An act or practice is *abusive* when:

1. It materially interferes with the ability of a consumer to understand a term or condition product or service.
2. It takes unreasonable advantage of one of the following:
 - a lack of understanding about the cost, risks, or conditions of the product or service
 - the inability of the consumer to protect themselves when selecting or using a consumer financial product or service
 - consumer trust that an entity is acting in their best interest

There is no safe harbor for UDAAP. Collectors can only point to what they did to try and avoid the UDAAP in the first place.

- Do you have policies, procedures and controls in place to avoid unfair, deceptive and abusive acts and practices?
- Is your company capable of identifying, measuring, monitoring and controlling against UDAAP?

Here's a Tip:

Don't forget, no matter who you are, the CFPB has the authority to enforce federal consumer financial protection law against anybody. It doesn't matter who you are: large market participants or small market participants. If the law is being violated, they've got the enforcement authority to enforce that law.

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