



# **UDAAP & UBIT: Legal Issues Affecting the Student Loan Industry**

**2015 Education Finance Council Mid-Year Membership Meeting**

**July 10, 2015**

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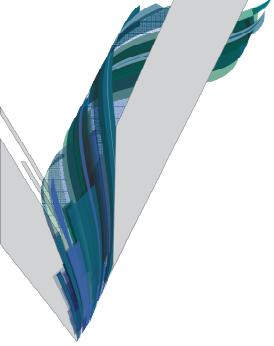
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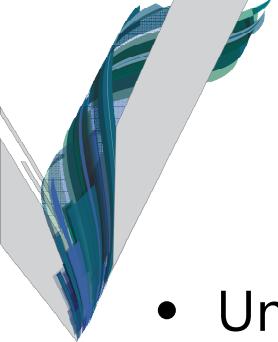
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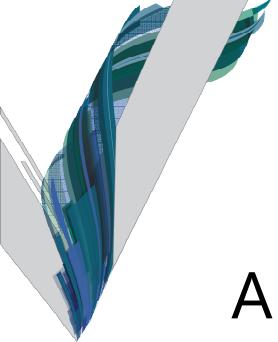
# **Avoiding Unfair, Deceptive, or Abusive Acts or Practices**

**Jonathan L. Pompan**



# What is UDDAP?

- Under the **Dodd-Frank Wall Street Reform and Consumer Protection Act** (Dodd-Frank Act), all covered persons or service providers are legally required to refrain from committing **unfair, deceptive, or abusive acts or practices** (collectively, UDAAPs) in violation of the Act. (See Dodd-Frank Act, §§ 1002, 1031 & 1036(a), codified at 12 U.S.C. §§ 5481, 5531 & 5536(a))
- It is also prohibited for any person, even if not a covered person or service provider, to knowingly or recklessly provide substantial assistance to a covered person or service provider in violating section 1031 of the Dodd-Frank Act. (See Dodd-Frank Act, § 1036(a)(3), 12 U.S.C. § 5536(a)(3))



## Deceptive Acts or Practices

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

1. The representation, omission, act, or practice misleads or is likely to mislead the consumer;
2. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
3. The misleading representation, omission, act, or practice is material.

Consider: 4 Ps: prominent, presented, placement, proximity.



## Unfair Acts or Practices

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

- (1) It causes or is likely to cause substantial injury to consumers;
- (2) The injury is not reasonably avoidable by consumers; and .
- (3) The injury is not outweighed by countervailing benefits to consumers or to competition.



# Abusive Acts or Practices

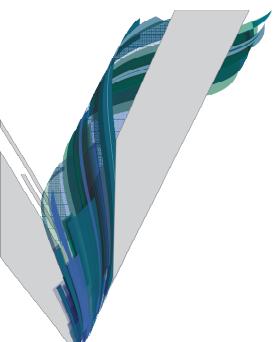
The Dodd-Frank Act makes it unlawful for any covered person or service provider to engage in an **"abusive act or practice."** An abusive act or practice:

Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or

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 interests of the consumer.

# CFPB and Sources of Expectations



**Submit a complaint**

Have an issue with a financial product or service? We'll forward your complaint to the company and work to get a response from them.

CHECK YOUR COMPLIANT STATUS  
Check now | Report

Para presentar una queja en español, llame al (855) 411-2372

Choose a product or service to get started  
If you don't want to submit a complaint, you can tell your story.

MOST COMMON  
 Mortgage Debt collection Credit reporting

OTHER PRODUCTS AND SERVICES  
 Bank account or service Credit card Money transfer Investment

**Supervisory Highlights**

Version 2 – October 2012

**CFPB Supervision and Examination Manual**

This examination manual provides general guidance to supervisory staff of the CFPB. It does not limit the CFPB and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner. While every effort has been made to ensure accuracy, examination procedures should not be relied on as a legal reference.

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**Final Rules Issued by the CFPB**

**2015**  
JUNE 10  
Defining Larger Participants of the Autocredit Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service [\[PDF\]](#)

JUNE 9

[\[PDF\]](#)

For more, see our blog post about the 2014 rural and underserved exemptions.

**2015 Rural counties list**  
Access the final list for use in 2015 in an [\[Excel\]](#) file.

**2015 Rural or underserved counties**  
Access the final list for use in 2015 in an [\[Excel\]](#) file.  
For more, see our blog post about the [\[PDF\]](#).

**2015 Decket**  
Administrative Proceeding File No. 2015-CPPB-0011 – Garrison Mortgage Corporation  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0010 – International Land Consultants, Inc., et al.  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0009 – Regions Bank  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0008 – Fort Knox Military Assistance Company, LLC  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

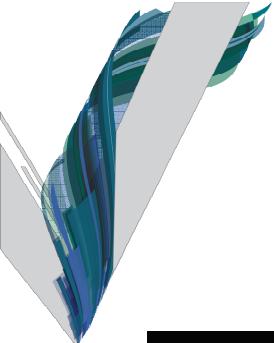
Administrative Proceeding File No. 2015-CPPB-0007 – R.M.K Financial Corporation  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0006 – Flagship Financial Group, LLC  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

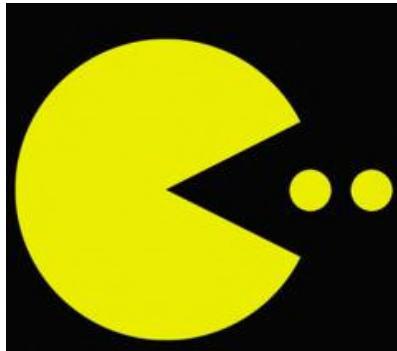
Administrative Proceeding File No. 2015-CPPB-0005 – Amazon Preferred Lending, Inc.  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0004 – New Day Financial, LLC  
• Consent order [\[PDF\]](#)  
• Stipulation [\[PDF\]](#)

Administrative Proceeding File No. 2015-CPPB-0003 – Continental Finance Company, LLC  
• Consent order [\[PDF\]](#)

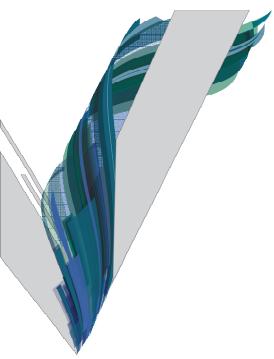


# CFPB and other Sources of Regulation



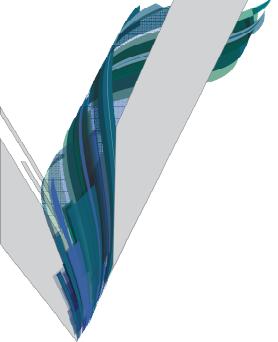
# Common Triggers of Enforcement





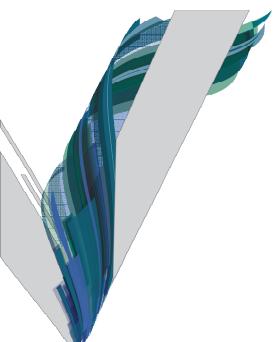
# What's the impact of an investigation and enforcement action?



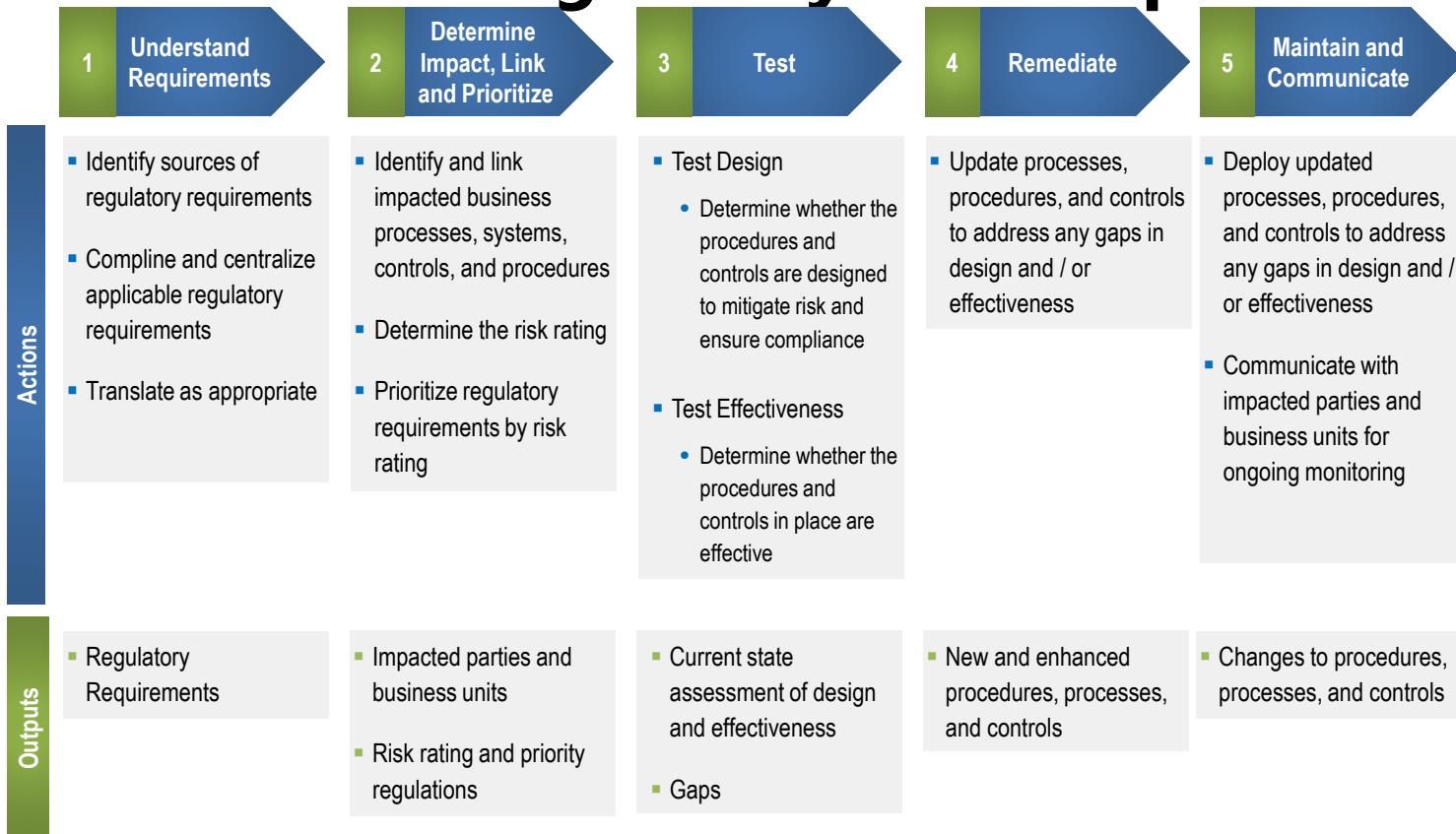


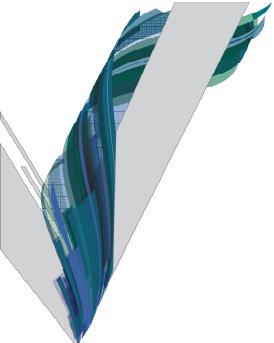
# CFPB Enforcement Authority

- CFPB may investigate, issue subpoenas and civil investigative demands, and compel testimony
- CFPB may conduct hearings and adjudications to enforce compliance, including issuing cease-and-desist orders
- CFPB may initiate actions for civil penalties or an injunction
  - Penalties up to \$1M per day for knowing violations
  - No exemplary or punitive damages
- Criminal referrals to DOJ
- Whistleblower protection
- State attorneys general may also enforce the CFPA with notice to the CFPB
- May enforce rules issued by the FTC to the extent such rules apply to a covered person or service provider
- No express private right of action under the CFPA



# Avoiding UDAAP in an Evolving Regulatory Landscape





# **CFPB Coordination with Other Federal and State Enforcement Agencies**

- Announced in January 2012 (after State of the Union Address)
- Unit within the Financial Fraud Enforcement Task Force that was created in late 2009, and is led by the DOJ
- CFPB, FTC, DOJ, DoE Inspector General, state AGs, and more are participating





# CFPB Threats and Opportunities

- Student Related Initiatives
- Civil Money Penalty Fund
- Consumer Financial and Literacy Initiatives
- Initiatives Related to Other Lending and Debt Collection
- Other



**CFPB Launches Public Inquiry Into Student Loan Servicing Practices**

WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) is launching a public inquiry into student loan servicing practices that can raise paying back loans a stressful or harmful process for borrowers. The Bureau is asking servicers to provide information about the fees, charges, and other practices that may affect the quality of service. The CFPB is also releasing an enhanced version of its *Paying Student Debt* online tool to help borrowers figure out their options for a trouble repayment.

"Student debt stress can make borrowers feel like they are walking a tightrope where any other move in paying back their loan can cause them to fall," said CFPB Director Richard Cordray. "Today's inquiry seeks to identify the pain points in the system that make repayment a source of difficult and stressful processes."

The [Request for Information](http://www.consumerfinance.gov/cfpb/announcing-cfpb-student-loan-servicing-g017) is available at: <http://www.consumerfinance.gov/cfpb/announcing-cfpb-student-loan-servicing-g017>.

**Mid-year update on student loan complaints**

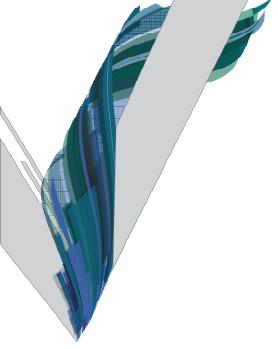
**CFPB Supervision Report Highlights Risky Practices in Student Loan Servicing**

WASHINGTON, D.C. — The Consumer Financial Protection Bureau (CFPB) today released its biannual report on the risks and challenges in the Bureau's supervision of the student loan marketplace. This year consumers found the Bureau's oversight of illegal practices like charging unfair late fees and discriminating for credit history. Bureau examiners also found that some companies failed to provide critical economic protections required by the new CFPB servicing rules that took effect earlier this year.

"Students are already struggling with mounting amounts of loan debt," said CFPB Director Richard Cordray. "Stressed borrowers deserve better than illegal practices in the work to pay back their loans. All borrowers should be treated fairly by loan servicers, and through our enforcement program, we intend to hold them accountable for how they treat borrowers."

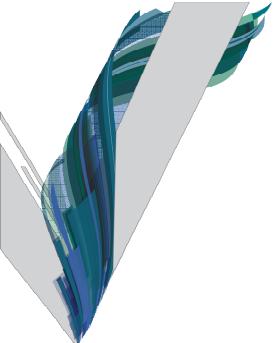
Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the CFPB is authorized to supervise banks with over \$10 billion in assets and certain nonbanks. These include mortgage companies, private student loan lenders, and payday lenders, as well as nonprofits that borrow billions through crowdfunding at "low per participant." To date, the Bureau has issued rules to regulate the larger participants in the debt marketplace, consumer reporting, educational loan transfer, and student loan servicing markets.

Today's report, which is the fifth edition of Supervision Highlights, generally covers supervisory activities between March and June 2014. The report highlights problems in two specific markets: student loan servicing and mortgage servicing. Details are

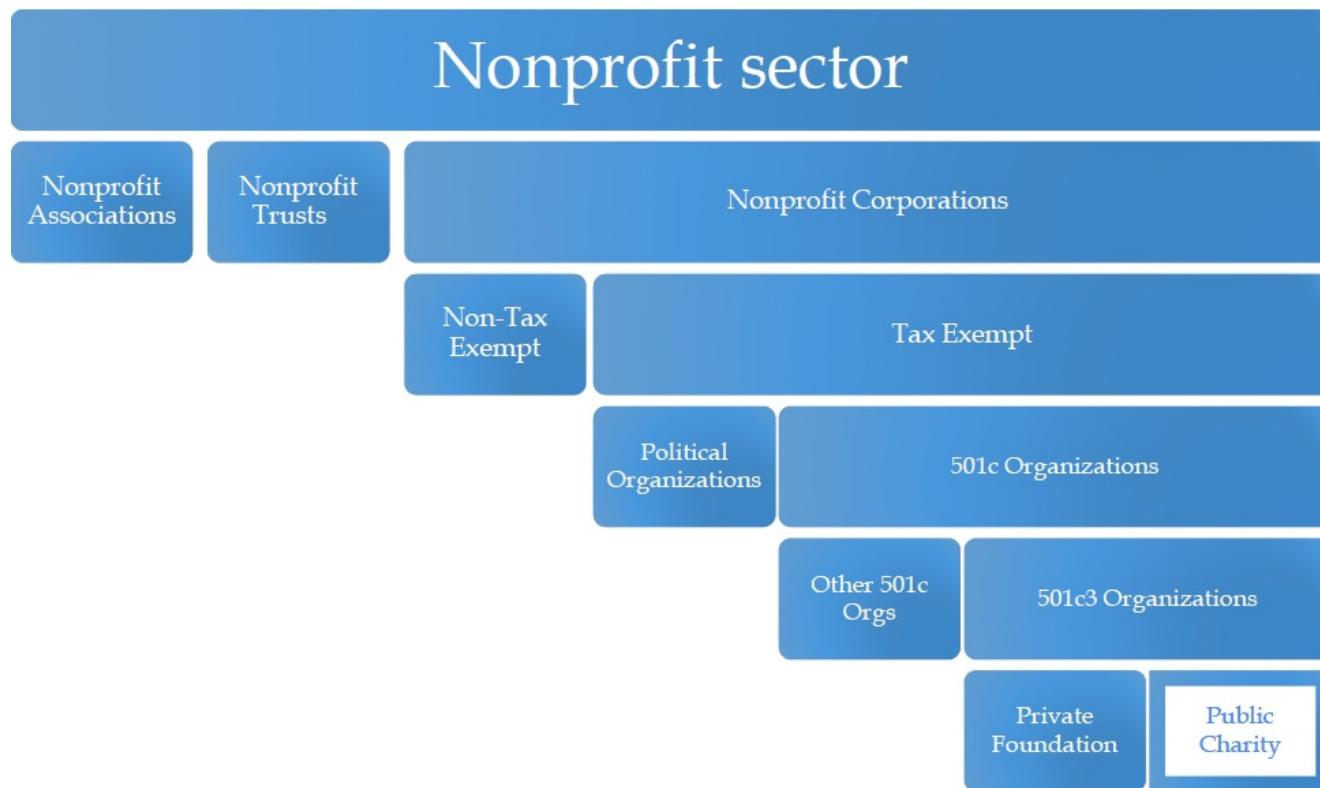


# **UBIT: Unrelated Business Income Tax**

**Carrie Garber Siegrist**



# Scope of Presentation

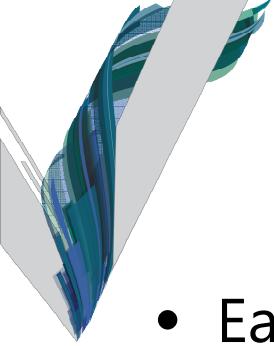




# Exempt Organization Purposes

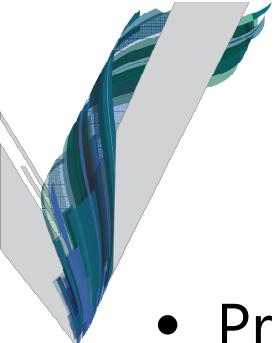
- IRC Section 501(c)(3) tax-exempt organizations must be organized and operated exclusively for the exempt purposes described in the Code.
- IRC §501(c)(3)

“...religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals...”



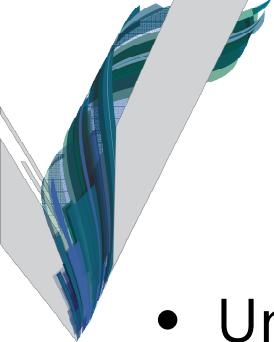
## Private Inurement / Private Benefit

- Earnings of an exempt organization may not inure to any private shareholder or individual
  - Any person having a personal or private interest in the activities of the organization
- Examples
  - Goods and services to members or other insiders
  - Paying personal expenses
  - Rent-free housing
  - Interest-free or no-obligation-to-repay loans



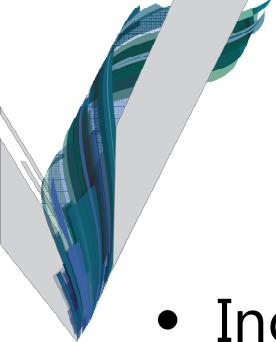
## Commerciality – Not More than an Insubstantial Amount

- Proper for an exempt organization to conduct a commercial trade or business if it is in furtherance of its exempt purposes and the primary purpose is not to engage in an unrelated trade or business
- Generally, the IRS will revoke or deny exempt status to otherwise qualifying organizations where their operation of a commercial trade or business is unrelated to the organization's purposes and it will require substantial attention from the organization



## Unrelated Business Income Tax

- Unrelated business taxable income tax is the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less the deductions allowed which are directly connected with the carrying on of such trade or business.
  - Trade or business
  - Not substantially related
  - Regularly carried on



## Income Excluded from UBTI

- Income that is specifically excluded from UBIT
  - Interest income
  - Royalty income
  - Certain research income
  - Conference and trade show revenue
  - Qualified sponsorship income
  - Certain bingo games
  - Debt management plan services
  - Renting mailing list to another charitable organization



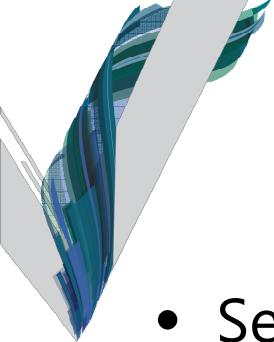
## Trade or Business

- Not an unrelated trade or business if:
  - Volunteer labor
  - Convenience of members, students, patients, officers, or employees
  - Donated merchandise
  - Low-cost articles



## Substantially Related

- Relevant factor here: Is the trade or business related to your exempt organization's purposes?
  - Need to generate revenue is not enough
- Focus: unfair competitive advantage to exempt organization?



## Exception: IRC Section 115

- Section 115 excludes from gross income “income derived from any public utility or the exercise of any essential government function and accruing to a State or any political subdivision thereof, or the District of Columbia.”
- Implications
  - IRS Form 990
  - Corporate Status
  - Change in Programs



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