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UDAAP: The CFPB's Emerging and Evolving Doctrine

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About Venable LLP



Venable is an *American Lawyer* 100 law firm. Our Consumer Financial Protection Bureau Practice Group combines first-hand knowledge of the structure, culture, and personalities that drive the Bureau with a diverse team of nationally recognized attorneys practicing in the areas of financial services, marketing and consumer protection, litigation, privacy and data protection, and legislative advocacy.

About Cornerstone Research

CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY



Cornerstone Research is a leading financial and economic consulting firm. We bring a multidisciplinary focus and rigorous economic and data analysis skills to consumer finance class actions and regulatory investigations. We consult to a variety of consumer finance firms and their attorneys in matters involving mortgages, credit cards, loans, and credit reporting and collection practices.



Agenda

- History of the Dodd-Frank Act and UDAAP provisions
- Types of acts the CFPB has considered to be UDAAP violations
- How law enforcement agencies like the CFPB think
- UDAAP and CFPB interpretation of doctrine from other agencies
- Damages from UDAAP violations
- Tips for identifying and remediating potential UDAAP violations



UDAAP

Unfair, Deceptive, or Abusive Acts or Practices

Unfair: an act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers

Deceptive: an act or admission 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.

Abusive: an act or practice that materially interferes with the ability of a consumer to understand a term or condition of a financial product or service, or takes unreasonable advantage of (a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

See 12 U.S.C. §§ 5531, 5536; deception is modeled on the FTC's deception doctrine.



What is the Bureau looking for?

How the CFPB thinks and why it may target your company

- Interested in investigating the little things, in case they lead to something bigger
- Conscious about not repeating the pre-Great Recession mistakes of other regulators
- Increased focus on student lending, loan servicing, debt collection, auto lending, small-dollar lending



The Bureau's Use (or Non-use) of Established Doctrines

- Deception and Unfairness are borrowed from and similar to the FTC's doctrines
- NORA (Notice and Opportunity to Respond and Advise) similar to an SEC Wells Notice
- Extensions of previously unused doctrine
 - e.g., enforcing dormant provision in the Telemarketing Sales Rule
- Abusive is a new concept and can apply as a gap-filler



CLE CODE

Consumer



The Bottom Line: UDAAP Damages Considerations

- Identification of affected consumers is key
- Range of options for considering “harm” to consumers
 - Incremental fees and interest
 - Debt forgiveness and payment refunds
 - Less tangible costs
- Interplay between Redress and Civil Money Penalties



Questions?

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